Supreme Court of the United States

OCTOBER TERM, 1970

No. 1184

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

PLASTERERS' LOCAL UNION NO. 79, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO, ET AL.

No. 1231

TEXAS STATE TILE & TERRAZZO COMPANY, INC.,
Petitioner,

—v.—

PLASTERERS' LOCAL UNION NO. 79, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,073

PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION, AFL-CIO, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

and

TEXAS STATE TILE & TERRAZZO COMPANY, INC., ET AL., *Intervenors*

On Appeal from a Decision and Order of the National Labor Relations Board

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APPENDIX

Decision and Order of the Board

Upon charges filed on January 30, 1967, and February 7, 1967, by Southwestern Construction Company, herein called Southwestern, and on March 17, 1967, by Martini Tile and Terrazzo Company, herein called Martini, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 23, issued a complaint on September 14, 1967, against Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas, herein called the Respondent, alleging that the Respondent had en-

gaged in and was engaging in unfair labor practices with the meaning of Section 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act, as amended. In substance, the complaint alleges that the Respondent violated the Act by engaging in picketing and other activities at the M. D. Anderson Library project, Houston, Texas, and at the Rainbo Baking Company, Houston, Texas, with an object of forcing or requiring Southwestern and/or its subcontractor, Texas State Tile and Terrazzo, Inc., herein called Texas Tile, and Martini, to assign the work of applying to walls a coat of Portland cement mortar upon which tile was to be installed to employees represented by the Respondent, rather than to employees represented by Tile, Terrazzo and Marble Setters Local Union No. 20, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO, herein called the Tile Setters. The Respondent filed an answer admitting certain allegations of the complaint and denying certain other allegations.

On October 30, 1967, at a hearing held pursuant to the Complaint and Notice of Hearing, the parties agreed to submit this proceeding directly to the Board for the issuance of findings of fact, conclusions of law, and a Decision and Order. It was agreed that the entire record in this case shall consist of: The Decision and Determination of Disputes, the transcript of testimony, exhibits, and formal papers in the prior 10(k) proceedings,[2] and the transcript, exhibits and formal papers in the present proceeding. The parties waived a hearing before a Trial

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[2] On August 22, 1967, in a proceeding pursuant to Section 10(k), the Board issued its Decision and Determination of Disputes (167 NLRB No. 23), in which the Board concluded that employees of Texas Tile and Martini represented by the Tile Setters were entitled to perform the work in dispute. At no time since the issuance of the Board's Decision and Determination of Disputes has the Respondent given written notification to the Regional Director for Region 23 that it would refrain from forcing or requiring Texas Tile and/or Martini, by means proscribed in Section 8(b)(4)(D), to assign the work in dispute to plasterers rather than tile setters.

Examiner, the making of findings of fact and conclusions of law by a Trial Examiner, and the issuance of a Trial Examiner's Decision. On April 22, 1968 the General Counsel filed a Motion to Transfer Case to the Board. On April 24, 1968, the Board granted the motion.[3]

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. Briefs were filed by the Respondents, and jointly by Texas Tile, Martini, the Tile Setters and the Intervenors, which have been duly considered.

Upon the entire record in these cases, the Board makes the following:

FINDINGS OF FACT

1. *The business of the Employers.*

The parties stipulated that:

A. Texas Tile, a Texas corporation with its principal office and place of business located in Houston, Texas, is engaged in the business of installing tile and terrazzo. During the 12-month period prior to the hearing Texas Tile purchased and received goods, materials, and supplies valued in excess of $50,000, which materials were shipped from points outside the State of Texas directly to Texas Tile at points within the State of Texas.

B. Martini, a Texas corporation with its principal office and place of business located in Houston, Texas, is engaged in the business of installing tile and terrazzo. During the 12-month period prior to the hearing Martini purchased and received goods, materials, and supplies valued in excess of $50,000, which materials were shipped from points outside the State of Texas directly to Martini at points within the State of Texas.

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[3] Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

We find that Texas Tile and Martini are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. *The labor organizations involved.*

The parties stipulated, and we find, that the Plasterers and the Tile Setters are labor organizations within the meaning of Section 2(5) of the Act.

3. *The Unfair Labor Practices.*

A. *The M. D. Anderson Library Job*

In 1965, Southwestern, a general contractor, entered into a contract with the University of Houston to construct an addition to the M. D. Anderson Library. Southwestern let a subcontract for the tile and terrazzo work to Texas Tile, which commenced work in August 1966. Texas Tile has a collective-bargaining agreement with the Tile Setters and assigned the work to employees represented by the Tile Setters. At the outset of work in August 1966, the Tile Setters began to apply a coat of Portland cement mortar to receive tile. The Respondent claimed the work. The matter was sent to the National Joint Board for the Settlement of Jurisdictional Disputes. On November 10, 1966, the Joint Board rendered a decision awarding the disputed work to the Respondent. Texas Tile was not bound by the Joint Board decision. The record shows, and we find, that thereafter, the Respondent, through its representative, George Longshore, made several attempts to obtain work in question but Texas Tile and Tile Setters refused to accede to its demands. On January 24, 1967, the Respondent established a picket at the jobsite. The picket sign read as follows:

> Plasterers Local 79 protest the refusal of Texas State Tile and Terrazzo to comply with the National

> Joint Board. Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike, or concerted refusal to work.

In fact, all crafts working on the job honored the picket, causing a complete work stoppage. The picket was removed after an injunction was granted by the United States District Court for the Southern District of Texas, Houston Division, on February 20, 1967. We further find that the Respondent engaged in such picketing with an object of forcing or requiring Texas Tile to change the assignment of the disputed work from its own employees, who were members of or represented by the Tile Setters, to employees who were members of or represented by the Respondent.

B. *The Rainbo Job.*

Martini has a contract with the Rainbo Baking Company in Houston, Texas, to furnish labor and materials for the installation of ceramic tile. Martini delivered its materials to the jobsite on or about March 15, 1967, and began work the next day. Martini has a collective-bargaining agreement with the Tile Setters and assigned the work in dispute to employees represented by the Tile Setters.

On the morning of March 17, 1967, the Respondent established a picket line at the jobsite. The picket sign read as follows:

> Plasterers Local 79, protests substandard conditions Martini Tile Co., Inc., Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or a concerted refusal to work.

Shortly after the establishment of the picket, officials of Rainbo requested Martini to remove its employees from the premises. Martini complied and a work stoppage ensued. Thereafter, the Respondent removed the picket and

picketing was not resumed although Martini returned and continued work on the job. Respondent has stipulated, and we find, that the Respondent engaged in such picketing with an object of forcing or requiring Martini to change the assignment of the disputed work from its own employees, who were members of or represented by the Tile Setters, to employees who were members of or represented by the Respondent.

C. *Respondent's Contentions*

The Respondent's defense herein, as argued in its brief, is in the nature of a request for reconsideration of the Board's Decision and Determination of Disputes issued in the 10(k) proceeding. It argues, *inter alia*, that the word "parties" as used in Section 10(k) does not mean the employer and the two unions or groups of employees claiming the work in dispute need agree upon a method for the voluntary adjustment of the dispute for the Board to quash the Notice of Hearing, but only that the two Unions or groups of employees need agree upon such a method of adjustment, and that since Respondent and the Tile Setters are both subject to the Joint Board's jurisdiction, the Notice of Hearing should have been quashed. We reiterate, however, our consistent interpretation of Section 10(k) that the employer controlling the work assignment as well as the rival unions involved comprise the "parties to such dispute," and all must approve and enter into a voluntary adjustment procedure in order to preclude a hearing and determination pursuant to that Section.[4] Moreover, we note that the Board's longstanding interpretation of this aspect of Section 10(k) was neither questioned nor disturbed when the National Labor Relations Act was most recently

[4] *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 428, AFL (Philadelphia Association)*, 108 NLRB 186, 195-8, Local 450, *and Joiners of America, Local 1622 (O.R. Karst)*, 139 NLRB 591. See also our Decision in the prior 10(k) proceeding, 167 NLRB No. 23, and the cases cited in footnote No. 4 therein.

amended by Congress in 1959. Accordingly, we find no merit in this contention of the Respondent. We have examined the remaining arguments in support of the Respondent's position, and also find nothing therein which was not previously considered by the Board. We perceive no reason for disturbing the prior Decision and Determination of Disputes.[5]

On the basis of the foregoing facts, and the entire record in these cases, we find that the Respondent's picketing of the M. D. Anderson and Rainbo projects as described above was for a proscribed object and in violation of Section 8(b)(4)(i) and (ii)(D).

4. *The Effect of the Unfair Labor Practices Upon Commerce.*

The activities of the Respondent set forth in section 3, above, occurring in connection with the operations of the Employers set forth in section 1, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

5. *The Remedy.*

Having found that the Respondent violated Section 8(b)(4)(i) and (ii)(D) of the Act, we shall order it to

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[5] By motions made on February 21, 1968, "To Correct Record on Material Omissions," and on May 22, 1968, "To Correct 10(k) Record on Material Misstatement", Texas Tile, Martini and the Tile Setters seek to supplement the 10(k) record with various evidentiary matter that is in the nature of new evidence, which is not shown to be newly discovered and previously unavailable. It is clearly not a "correction" of the 10(k) record, or a supplying of evidence to fill an obvious omission in the record. The motions are hereby denied. Previously, on January 17, 1968, the Board denied a "Motion to Re-open 10(k) Record on Issuance of Nationwide Order" filed by the Tile Setters and the two employers, on the ground, *inter alia*, that the assertion that the evidence offered therein was newly discovered and previously unavailable was unsupported.

cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Texas Tile and Martini are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent and the Tile Setters are labor organizations within the meaning of Section 2(5) of the Act.

3. By its picketing at the M. D. Anderson Library job, Houston, Texas, with an object of forcing or requiring Texas Tile to assign certain work (applying to walls a coat of Portland cement mortar upon which tile was to be installed) to employees represented by the Respondent rather than to employees represented by the Tile Setters, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

4. By its picketing of the Rainbo Baking Company job, Houston, Texas, with an object of forcing or requiring Martini to assign certain work (applying to walls a coat of Portland cement mortar upon which tile was to be installed) to employees represented by the Respondent rather than to employees represented by the Tile Setters, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas its officers, agents, and representatives, shall:

1. Cease and desist from engaging in, or inducing or encouraging individuals employed by Texas State Tile and Terrazzo, Inc., or Martini Tile and Terrazzo Company, or any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any materials or to perform any services; and from threatening, coercing, or restraining the aforesaid persons, where an object in either case is to force or require Texas State Tile and Terrazzo, Inc., or Martini Tile and Terrazzo Company, to assign the work of applying to walls a coat of Portland cement mortar upon which tile is to be installed at the M. D. Anderson Library and Rainbo jobs, to employees represented by the Respondent rather than to employees represented by Tile, Terrazzo and Marble Setters Local Union No. 20, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO.

2. Taking the following affirmative action the Board finds will effectuate the policies of the Act:

(a) Post at its business offices, meeting halls, and all other places where notices to employees are customarily posted, in Houston, Texas, copies of the attached notice marked "Appendix".[6] Copies of said notice, on forms provided by the Regional Director for Region 23, shall, after being duly signed by the Union's representative, be posted by the Union immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by the Union to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for Region 23 for posting by Texas State Tile

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[6] In the event that this order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decision of the United States Court of Appeals, Enforcing an Order."

and Terrazzo, Inc., and Martini Tile and Terrazzo Company, the Companies willing, at locations where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 23, in writing, within 10 days from the date of this order, what steps have been taken to comply herewith.

Dated, Washington, D. C., June 27, 1968

JOHN H. FANNING, Member

HOWARD JENKINS, JR., Member

SAM ZAGORIA, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO ALL OUR MEMBERS PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT engage in, or induce or encourage individuals employed by Texas State Tile and Terrazzo, Inc., or Martini Tile and Terrazzo Company, or any other person engaged in commerce, or in an industry affecting commerce, to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any materials, or to perform any services, or threaten, coerce, or restrain the aforesaid persons, where an object in either case is to force or require Texas State Tile and Terrazzo, Inc., or

Martini Tile and Terrazzo Company, to assign the work of applying to walls a coat of Portland cement mortar upon which tile is to be installed, at the M. D. Anderson Library job or at the Rainbo Baking Company, Houston, Texas, to employees represented by this Union, rather than to employees represented by Tile, Terrazzo and Marble Setters Local Union No. 20, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO.

PLASTERERS LOCAL UNION No. 79, OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF HOUSTON, TEXAS

(Labor Organization)

Dated ..... By .....

(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 6617 Federal Office Building, 515 Rusk Avenue, Houston, Texas 77002, (Tel. No. 228-4296), if they have any questions concerning this notice or compliance with its provisions.

Decision and Determination of Disputes

This is a consolidated proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Southwestern Construction Company, herein called Southwestern, and Martini Tile and Terrazzo Company, herein called Martini, alleging violations of Section 8(b)(4)(D) of the Act by Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas herein called the Plasterers. Pursuant to notice, a hearing was held on April 6, 7, 10, 11, 12, 13, and 14, 1967,

before Donald H. Hicks, Hearing Officer. Southwestern, Martini, the Plasterers, Texas State Tile and Terrazzo, Inc., herein called Texas Tile, and Tile, Terrazzo and Marble Setters Local Union No. 20, herein called the Tile Setters, appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. All parties filed briefs which have been duly considered.

Upon the entire record in these cases, the Board makes the following findings:

1. *The business of the Employers.*

The parties stipulated that:

A. Texas Tile, a Texas corporation with its principal office and place of business located in Houston, Texas, is engaged in the business of installing tile and terrazzo. During the 12-month period prior to the hearing, Texas Tile purchased and received goods, materials, and supplies valued in excess of $50,000, which materials were shipped from points outside the State of Texas directly to Texas tile at points within the State of Texas.

B. Martini, a Texas corporation with its principal office and place of business located in Houston, Texas, is engaged in the business of installing tile and terrazzo. During the 12-month period prior to the hearing, Martini purchased and received goods, materials, and supplies

[1] The Plasterers and the Tile Setters are parties to the dispute. While Southwestern is the Charging Party in Case No. 23-CD-133, Texas Tile intervened as the employer that assigned the work in that case to the Tile Setters. It participated jointly with Martini and the Tile Setters.

valued in excess of $50,000, which materials were shipped from points outside the State of Texas directly to Martini at points within the State of Texas.

We find that Texas Tile and Martini are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. *The labor organizations involved.*

The parties stipulated, and we find, that the Plasterers and the Tile Setters are labor organizations within the meaning of Section 2(5) of the Act.

3. *The dispute.*

A. The work in dispute is the application to walls of a coat of Portland cement mortar upon which tile was to be installed.

B. *The basic facts.*

CASE NO. 23-CD-133

In 1965, Southwestern, a general contractor, entered into a contract with the University of Houston to construct an addition to the M. D. Anderson Library. Southwestern let a subcontract for the tile and terrazzo work to Texas Tile, which commenced work in August 1966. Texas Tile has a collective-bargaining agreement with the Tile Setters and assigned the work to employees represented by the Tile Setters. At the outset of work in August 1966, the Tile Setters began to apply a coat of Portland cement mortar to receive tile. The Plasterers claimed the work. The matter was sent to the National Joint Board for the Settlement of Jurisdictional Disputes. On November 10, 1966, the Joint Board found that "the work in dispute is governed by the agreement of August 22, 1917, and shall be assigned to Plasterers, except that any coat to be applied wet the same day under tile shall be placed by the Tile Setters. In the

thin-set or adhesive method of applying tile to walls and ceilings, the Plasterers shall apply the first and second coats of mortar, that is the scratch coat and plumb coat. The Plasterers shall plumb, rod and square all walls, rod and level all ceilings and the Tile Setters shall apply the final setting bed for the Tile." Texas Tile was not bound by the Joint Board decision.

Thereafter, the Plasterers made several attempts to obtain the work in question but the Tile Setters refused to accede to their demands. On January 24, 1967, the Plasterers established a picket at the jobsite. The picket sign read as follows: "Plasterers Local 79 protests the refusal of Texas State Tile and Terrazzo to comply with National Joint Board. Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or concerted refusal to work." All crafts working on the job honored the picket. The picket was removed after an injunction was granted by the United States District Court for the Southern District of Texas, Houston Division, on February 20, 1967. The work in dispute was completed by the Tile Setters.

The immediate work involved at the time of the picketing was the application of a second coat of Portland cement mortar (in the stairwell area) upon which quarry tile was to be installed. The Plasterers had applied a scratch coat of plaster (agreed to be Plasterers' work). Then the disputed second coat (called the "brown coat" by the Plasterers or the "float coat" or "setting bed" by the Tile Setters) was applied by the Tile Setters. Both unions claim this latter coat as their own work.

CASE NO. 23-CD-137

Martini has a contract with the Rainbo Baking Company in Houston, Texas, to furnish labor and materials for the installation of ceramic tile. Martini delivered its materials to the jobsite on or about March 14, 1967, and began work the next day. Martini has a collective-

bargaining agreement with the Tile Setters and assigned the work in dispute to employees represented by the Tile Setters.

On the morning of March 17, 1967, the Plasterers established a picket line at the jobsite. The picket sign read as follows: "Plasterers Local No. 79, protests substandard conditions Martini Tile Co., Inc., Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or a concerted refusal to work." Shortly after the establishment of the picket, officials of Rainbo requested Martini to remove its employees from the premises. Martini complied. The Plasterers removed the picket and picketing was not resumed although Martini subsequently returned and completed the job.

The work in dispute is the application of a coat of Portland cement mortar applied directly to metal lathe which was laid over painted brick. The Plasterers contends that this is the "brown coat", which is plasterers' work, while the Tile Setters claims that the coat in question is the "float coat" or "setting bed" which is tile setters' work. The dispute at Rainbo was not submitted to the Joint Board for a decision. Martini filed the charge.

C. *Contentions of the parties.*

The Plasterers admits seeking and demanding, through its representative, George Longshore, assignment of the work in dispute in Case No. 23-CD-133 at a series of meetings with representatives of the Tile Setters, Texas Tile, and Southwestern, but contends it did not violate Section 8(b)(4)(D), as there were no threats to force a change in the assignment of the work in question, and the picket line was established only to protest Texas Tile's refusal to comply with the Joint Board's decision. In any event, it argues, it is entitled to the work on the basis of the skill, relative efficiency, and economy and quality of plasterers' work, area practice, the award

made by the Joint Board in the instant case, and an agreement made between the Plasterers' and Tile Setters' International Unions. It argues that plasterers have always been entitled to the last coat of mortar which is plumbed, rodded, and squared to receive tile. It further contends that the recent introduction of dry set mortars has eliminated the tile setters' traditional setting bed in the one coat and thin set methods, and that the last mortar coat before the application of the tile under these new methods can be called the setting bed only if tile is applied while the coat is plastic or wet; a coat of mortar that is allowed to dry is work properly assigned to plasterers. If the tile is to be applied while this last coat of mortar is still wet or plastic, it does not claim the application of that coat, in the interest of efficiency and economy, since it is serving as a combined conventional setting bed and plumb coat.

The Tile Setters contends[2] that it is entitled to the work in dispute on the basis of the skill, relative efficiency, and economy and quality of tile setters' work; the employer, area, and industry practice; and its contracts with Texas Tile and Martini which explicitly assign the designated work to it. It argues further that it is always entitled to the work of applying the last coat of mortar, which is plumbed, rodded, and squared to receive tile, whether or not that coat is allowed to dry before tile is applied. The Tile Setters admits that it is bound by Joint Board procedures, but contends that the Joint Board award of November 10, 1966, in effect awards the work to it, not to the Plasterers. It points out that the award states that the Plasterers is entitled to the work in dispute on the basis of the original (1917) Green Book agreement between the parties, and that that agreement dealt with the conventional or three coat method of plastering and assigned plasterers the work of preparing ceilings and walls for the Tile Setters setting bed. It urges that the advent of dry set mortars and new con-

[2] Texas Tile and Martini join in the Tile Setters' contentions.

struction techniques has eliminated work formerly within the jurisdiction of plasterers under the conventional method, and when either the one coat (or float coat) method or the thin set method are employed, the last coat applied *is* the "setting bed", which even the Joint Board recognized as the tile setters' work.

4. *Applicability of the Statute*

The charges herein allege violations of Section 8(b)(4)(D) of the Act. The record shows, and the Plasterers does not deny, that between August 1966 and January 24, 1967, its representative, George Longshore, sought and demanded from Southwestern and Texas Tile the assignment of plasterers rather than tile setters to the work in dispute in Case No. 27-CD-133, and that on January 24, 1967, a picket was established at the jobsite which caused a work stoppage by all crafts. In Case No. 23-CD-137, the Plasterers concedes, and the record shows, that it established a picket at Rainbo Baking Company, and urged Martini to assign the application of the coat of Portland cement mortar in dispute to plasterers rather than tile setters, and that a temporary work stoppage occurred as a result of the posting of the picket.

We find there is reasonable cause to believe that violations of Section 8(b)(4)(D) have occurred, and that the dispute is properly before the Board for determination under Section 10(k) of the Act.[3]

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[3] The Plasterers contends that, as the parties had agreed upon a voluntary method of adjustment of the dispute, the notice of hearing should be quashed. It argues that Section 10(k) requires only that the unions or groups of employees claiming disputed work agree upon a method of adjustment. We find this contention without merit. The Board has consistently held that the employer who assigned the disputed work must be a party to an agreement that purports to settle an existing jurisdictional dispute. *Local 450, International Union of Operating Engineers (Painting and Decorating Contractors of America, Houston Chapter etc.)*, 119 NLRB 1725; *United Brotherhood of Carpenters and Joiners of America, Local 1622 (O.R. Karst)*, 139 NLRB 591.

5. *The merits of the dispute.*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to all relevant factors. The following factors are asserted in support of the claims of the parties herein:

A. *Collective-bargaining agreements.*

Texas Tile and Martini have delegated their bargaining authority to the Tile Contractors Association of America, Inc., and to the Tile, Marble and Terrazzo Contractors of Houston, Texas. The Tile Contractors Association of America, Inc. has a collective-bargaining agreement with the Tile Layers International Union which specifically covers work of the type in dispute. The agreement in pertinent part defines tile layers work covered as: "The application of a coat or coats of mortar, prepared to proper tolerance to receive tile on floors, walls and ceiling regardless of whether the mortar coat is wet or dry at the time the tile is applied to it." Texas Tile and Martini, as members of the Tile, Marble, and Terrazzo Contractors of Houston, Texas, are also parties to a collective-bargaining agreement pertaining to local conditions with Tile Setters Union No. 20 which incorporates the above-quoted work coverage provision. Neither Texas Tile nor Martini has any contract with the Plasterers. Texas Tile does not employ plasterers. A representative of Martini testified that on occasion in the past it has hired plasterers to perform work of the type in dispute, but never without direct supervision of a tile setter. There have been no Board certifications bearing on the work in dispute.

B. *Employer, area, and industry practice.*

The record establishes that, with rare exception, Texas Tile and Martini use tile setters to perform the disputed work. Substantial testimony was offered into the record

by both the Plasterers and Tile Setters setting out specific construction projects in the area on which their respective crafts performed the work in dispute. Evidence as to industry practice was inconclusive. Though area practice by weight of numbers favors the claim of the Plasterers, in our view this factor is outweighed by other factors favoring the claim of the Tile Setters. Thus, the assignments here of the disputed work to tile setters accords with the practice of the Employers, and is not inconsistent with area or industry practice.

C. *Relative skills and efficiency of operation.*

The Tile Setters contends that tile setters are more skilled and more efficient than plasterers in applying a backup coat which is plumbed, rodded, and squared to receive tile, because only a tile setter knows exactly how to prepare a wall to the closest possible tolerance to receive tile. It also contends, as do Texas Tile and Martini, that it is more efficient, especially where only one coat of mortar is to be applied (as on the Rainbo project), to use the same craft for both the mortar work and the tile laying. The Plasterers contends, however, and the record supports its contention, that plasterers are trained to work to as close tolerance as do tile setters. It contends further that plasterers can work faster because they do plastering full-time rather than part-time, and that it is more economical to use plasterers.

The Board is satisfied from the entire record that neither craft can claim superior skill with regard to the application of the mortar bed. Although it appears to be a necessity to use the same craft for both the last mortar coat and the tile laying if the tile is to be set while the last coat is wet, it further appears that where the last coat is allowed to dry before the application of the tile, as was the situation in both cases here, using one craft or two is equally efficient.

Texas Tile's and Martini's assignments, therefore, were not inconsistent with either the relative skills involved, or with efficiency of operation.

D. *Other agreements.*

On August 22, 1917, the Plasterers and the Tile Setters entered into an agreement pertaining to the preparing or plastering of walls and ceilings which are to receive tile in the conventional or three coat method. This agreement provided that ". . . plasterers . . . shall prepare or plaster all walls which are to receive tile. They shall plumb, rod and square all walls and scratch same so as to guarantee adhesion of the final coat which shall be put on by the Tilelayer to act as a bed for his tile." A 1924 award entered in evidence spelled out the division of work in substantially the same terms.

E. *Action of the Joint Board.*

Both the Plasterers and the Tile Setters agree that they are bound by the Joint Board. The Plasterers urges that in Case No. 23-CD-133 the Joint Board awarded the work to them in its decision of November 10, 1966, and its clarification of March 15, 1967. The Tile Setters argues, as seen hereinabove, that the ward favored tile setters and not plasterers. Inasmuch as Texas Tile had not agreed to be bound by any decision of the Joint Board, the decision by that body with respect to the M. D. Anderson project is merely one of the factors which we must consider in assigning the disputed work.[4] In Case No. 23-CD-137, there was no Joint Board award.

In view of all of the circumstances, including its ambiguous nature, and upon the entire record, the Board is of the opinion that the Joint Board award above-mentioned should not be accorded controlling weight.

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[4] *Local 964, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Carleton Brothers Company)*, 141 NLRB 1138; *United Brotherhood of Carpenters and Joiners of America, Local No. 515 (J. O. Veteto & Son)*, 148 NLRB 351.

F. *Conclusions as to the merits of the dispute.*

As the Board stated in the *J. A. Jones* case,[5] it will, in conformity with the Supreme Court's *CBS*[6] decision, determine in each case presented for resolution under Section 10(k) of the Act, the appropriate assignment of disputed work only after taking into account and balancing all relevant factors.

Having considered all pertinent factors, we conclude that employees represented by the Tile Setters are entitled to perform the work in dispute. Tile setters are at least as skilled in the performance of the work as plasterers, and both Texas Tile and Martini, which assigned them to the work, have been satisfied with both the quality of their work and the cost of employing them. Moreover, the instant assignments of the disputed work to tile setters are consistent with the explicit provisions of the collective-bargaining agreement between the Tile Setters and Texas Tile and Martini, are consistent with the past practice of the Employers, and are not inconsistent with area or industry practice. We conclude that the Employer's assignment of the work to the tile setters should not be disturbed. We shall, accordingly, determine the existing jurisdictional dispute by deciding that tile setters, rather than plasterers, are entitled to the work in dispute. In making this determination, we are assigning the disputed work to the employees of Texas Tile and Martini, who are represented by the Tile Setters, but not to that Union or its members.

G. *Scope of the determination.*

The work which gave rise to the disputes has already been completed. The Tile Setters requests an award which would cover the whole United States or, in the al-

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[5] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402, 1410-11.

[6] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union Local 1212 (Columbia Broadcasting System)*, 364 U.S. 573.

ternative, an order covering the geographic area in which the Employers operate. The record will not support a finding, necessary for the granting of a broad order, that the disputes promise to recur between the parties. Our present determination, therefore, is limited to the particular projects at which this instant dispute arose.

DETERMINATION OF DISPUTES

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following determination of the disputes.

1. Tile layers employed by Texas State Tile and Terrazzo, Inc., and Martini Tile and Terrazzo Company, who are represented by Tile, Terrazzo and Marble Setters Local Union No. 20, are entitled to perform the work (at the M. D. Anderson Library, University of Houston, and the Rainbo Baking Company, Houston, Texas, respectively) of applying the one coat or float coat of Portland cement mortar as backup material to receive tile.

2. Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require Texas State Tile and Terrazzo, Inc., and/or Martini Tile and Terrazzo Company, to assign the above work to plasterers.

3. Within 10 days from the date of this Decision and Determination of Disputes, Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas, shall notify the Regional Director for Region 23, in writing, whether it will or will not refrain from forcing or requiring Texas State Tile and Terrazzo, Inc., and/or Martini Tile and Terrazzo Company, by means proscribed by Section 8(b)

(4)(D), to assign the work in dispute to plasterers rather than tile setters.

Dated, Washington, D.C. August 22, 1967

JOHN H. FANNING, Member

HOWARD JENKINS, JR., Member

SAM ZAGORIA, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

[1] BEFORE THE NATIONAL LABOR RELATIONS BOARD
Twenty-Third Region

Case No. 23-CD-133

In the Matter of:

PLASTERERS LOCAL UNION NO. 79 O. P. & C. M. I. A. OF HOUSTON, TEXAS

and

SOUTHWESTERN CONSTRUCTION COMPANY

Case No. 23-CD-137

In the Matter of:

PLASTERERS LOCAL UNION NO. 79 O. P. & C. M. I. A. OF HOUSTON, TEXAS

and

MARTINI TILE AND TERRAZZO COMPANY

7620 Federal Office Building,
515 Rusk Avenue,
Houston, Texas,
Thursday, April 6, 1967.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock, a.m.

BEFORE:

DONALD H. HICKS, Hearing Officer.

* * * * * * * * * * *

[33] Mr. Capuano: I will propose the stipulation that on February 10th, 1967, Judge Joe Ingraham, United States District Judge, United States District Court for

the Southern District of Texas, Houston Division, in Case No. 67H-102, Clifford Potter, Regional Director, et al., versus Plasterers Local [34] No. 79, et al., issued a temporary injunction against Plasterers Local 79 as a result of a request by the Regional Director under Section 10(1) of the Act, which was based upon the Charge filed by Southwestern against Plasterers Local 79 in Case No. 23-CD-133.

Hearing Officer: Do you so stipulate, Mr. Carr?

Mr. Carr: I so stipulate, and on the basis of the stipulation, I will withdraw my request for the admission of the documents.

Hearing Officer: O.K. Miss Thacker, do you so stipulate?

Miss Thacker: Yes.

Hearing Officer: The stipulation is received.

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[35] FLOYD WEBB

was called as a witness by and on behalf of Southwestern Construction Company and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Carr) Mr. Webb, what is your job? A. Superintendent for Southwestern Construction Company.

Q. I take it you are a job superintendent, is that correct? A. Right.

Q. On what job are you now? A. On the M.D. Anderson Library job at the University of Houston.

Q. And how long have you been there? A. Approximately eighteen months, shortly over eighteen [36] months, about twenty-two months.

Q. O.K.

I call your attention to August of last year, August of 1966. Is this approximately the time that the initial tile and terrazzo work was begun at the M. D. Anderson Li-

brary? A. That is about right, approximately on that date.

Q. Who was doing the work? A. Texas Tile people did the work.

Q. And this was Texas State Tile and Terrazzo? A. Right.

Q. And they were having members of which craft do the work? A. Well, Texas Tile employees, in other words, the Texas Tile Setters Union—the tile company was furnishing men which were union members.

Q. And these were tile setters? A. Right.

Q. Union members.

Do you know Mr. George Longshore? A. Yes, sir.

Q. What is his title? A. He is a business agent for the Plasterers.

* * * * * * * * * *

[37] Q. O.K.

Then we will go to January of this year, January of 1967.

Let's back-track. Was there tile and terrazzo work being carried on continuously from August of '66 through January of '67? A. No, sir, they completed, in other words, caught up with the work that could be completed possibly sometime in October, I don't know the exact date, but during October.

Q. O.K.

When did any tile work resume? A. It was in January we received handrails which held up the work and we received our handrails and started possibly the second week in January, thereabouts.

* * * * * * * * * *

Q. Describe basically and briefly the structure, beginning with the first thing that would be put up in the construction of this stairwell, and then each additional elements as it was added to it. A. The first thing, the lather—

[38] Hearing Officer: Just a minute. Let me interrupt you here a second. Are we going, at this point, into the actual work, itself, or are you still confining your questioning to whether or not there is reasonable cause to believe that there is a violation of 8(b)(4)(D) here?

Mr. Carr: I am unavoidably going to touch very briefly on the type of work involved, with the object of establishing that there was a violation of 8(b)(4)(D). I think that the record will have to, to have any meaning whatsoever to Mr. Webb's testimony, will have to reflect very briefly what the work is.

Hearing Officer: O.K.

Mr. Carr: I do not intend to make this a statement or have him testify as to the merits, but just enough so we can have some understanding of what work is involved.

Hearing Officer: O.K. Fine. Go ahead.

Q. (By Mr. Carr) Now, you were beginning to describe the— A. The lathers installed channels and lath on them, and then the plasterer came in and—

Q. Let's get more basic, if we could, for a second. A. All right.

Mr. Capuano: What area are we talking about?

Mr. Carr: We are talking about in the stairwells.

Mr. Capuano: In the stairwells.

[39] Q. (By Mr. Carr) I would presume the first thing that would go up— A. In other words, establishing the wall, the lather sets up a metal channel or a stud and fastens expanded metal on either side that forms your basic background.

Q. That is what I want you to go into. A. And then the lathers—

Mr. Capuano: I am sorry, could I interrupt you? I didn't catch what he said at first about a stud. A. It's a metal stud that your lather fastens on, in other words, in a wall you have got either wood or some support, center support,

Mr. Capuano: This is the center part of the wall?

The Witness: That's right. And you have an expanded metal lath fastened onto this, and after that is completed, the plasterer puts his scratch on or first coat, and then in this case you have got one more coat that follows, which was the float coat, I believe, is the plasterer's term, I mean the tile setter's term, which was used as your coat, setting coat or bed coat for the tile. And that makes your wall up there.

Q. (By Mr. Carr) Now, we are talking about—you mentioned two coats, the scratch coat, which was applied by the plasterer at this job. A. Right.

[40] Q. And then the float coat which, I believe, can be generally agreed, if there was a dispute, was the work in dispute. A. Right, that would be the second coat.

Q. Now, on top of that goes, in this case, what? A. The tile would be your next coat.

Q. What type of tile? A. In this we used quarry tile.

Hearing Officer: What kind?

The Witness: Quarry. It's a square tile. It's about six inches.

Hearing Officer: Is that the brand name or is it the type?

The Witness: It's the type of tile. It's normally used in floor or wall construction.

Mr. Carr: Quarry, q-u-a-r-r-y.

Q. (By Mr. Carr) In the construction of these stairwells do you know approximately when the handrails were first installed and by whom? A. The iron workers installed the handrails. It was, I believe, on a Friday, Thursday or Friday, the first sections were put up.

Q. Do you know— A. The 20th of January, I believe.

Q. In the month of January.

[41] If I show you a calendar would you be able to identify within a few days the Thursday or Friday we are talking about? A. Yes, sir.

Q. All right. A. We started setting the handrails around the 17th or 18th.

Mr. Carr: Let the record reflect that that would be Tuesday or Wednesday.

A. On Tuesday or Wednesday, one. And on Thursday the lather finished putting his metal lath up. And on Friday the plasterer scratched in.

Q. O.K.

So this would be, then, Friday, January 20th, is that correct? A. Right. Right.

Q. This, then, you have testified, that on Friday, January 20th, the plasterers applied what we have previously described as the scratch coat. A. Right.

Q. Was there any work, then, on Saturday or Sunday? A. No work on Saturday or Sunday.

Q. O.K.

Then I direct your attention to Monday, January 23, 1967. Can you tell me in relation to the stairwell if any work [42] was done on that date. A. Yes, sir, the tile setters put their float coat or bed coat on for the tile.

Q. They did no more than that? A. No, sir, that is all.

Q. They let it dry? A. Set overnight, right, sir.

Q. Then I direct your attention to the following day, Tuesday, January 24th. Was any work done in the stairwell on that day? A. No, sir.

Q. Can you give me any reason? A. Well, there was a picket on the job in the morning when we went to work.

Q. Do you know who put the picket out? A. Well, it was by the Plasterers.

Q. Plasterers.

* * * * * * * * * * *

[45] Q. (By Mr. Carr) Mr. Webb, you have heard the stipulation that has been read to the effect that it was not intended that there be a strike. Was there any work done on the project on Tuesday, the 24th of January? A. No, sir, there was no work.

Q. No work done.

Was there any work done on the following day, Wednesday, January 25? A. No, sir.

Q. Did you have occasion on that day to talk with George Longshore?

Hearing Officer: First of all was there any work to be done on the job?

The Witness: Yes, there was plenty of work to be done.

Hearing Officer: O.K. Go ahead.

Q. (By Mr. Carr) Did you have occasion on Wednesday, January 25, to talk to George Longshore? A. He was on the job, yes, sir. We were several there this morning. We were trying to work out a deal where we could go back to work.

Q. You mentioned several. Could you tell us any of the other people that were present? A. Jim Ross from our company was there, Mr. Bruggerman, I believe, Biggerman, Bruggerman, from the Plasterers, Tobin & Rooney Plaster Company was there, and Mr. Zambon from [46] Texas Terrazzo, Tile & Terrazzo Company, was there. And I believe two of his workmen were present at the time.

Q. Was there anybody there from the Tile Setters Union? A. Yes, sir, the business agent, Mr. McHargue.

Q. Mr. McHargue? A. Mr. McHargue was there, right. I get my names mixed up.

Q. Would you describe this meeting? A. Mr. Ross called this to get together to see if we could work together to see when we could go back to work.

Mr. Capuano: I am going to object to why Mr. Ross called the meeting. I think he can tell us what was said.

Hearing Officer: Sustained. Go ahead.

A. Well, this group of men collected at the job this morning, on that particular morning, to try to work out an agreement where we could go back to work there, and we more or less discussed the work that was to be did there, the work involved, and we had some of the tile there, showing the space it had to be in, where the third

coat, and so forth, wouldn't work, in other words, it had to be scratch—

Mr. Capuano: I can't hear you, sir.

A. A scratch coat and one extra coat or float coat was all that you could get on behind the handrail. In other words, you had such a small space there there wasn't no other way to put another coat on, in other words, to level up. And that was discussed around there, and each one stated what was [47] involved there. In other words, the Plasterers were claiming the putting of this coat on next to the tile, and the Tile Setters were using that as their level coat or finish coat to bed their tile to.

Q. (By Mr. Carr) Did Mr. Longshore—you said that he did claim that the second coat directly beneath, in this case because of the tolerance with the handrail would be the coat directly beneath the tile, was to be applied by the plasterers, is that correct? A. Right.

Mr. Capuano: I am going to object to that. I didn't hear him say that. And I think the question, you know, is quite leading, did Mr. Longshore claim—

Hearing Officer: Yes, it is leading.

Mr. Carr: I think it was merely a recitation, a summary of the statements that he had just made.

Mr. Capuano: Well, that is what I thought you were doing, but I don't recall him saying that Mr. Longshore made the statement that you made.

Hearing Officer: It's very difficult for me to understand Mr. Webb, and I am not sure that he said it in that manner. Maybe we better ask Mr. Webb again to speak more slowly and distinctly and tell us again what did happen in that meeting.

The Witness: O.K. We had a scratch coat on the wall [48] ready, in other words, for the bed coat or second coat, and then the next coat, the finish coat, would be your tile, in other words, that would bring you out to your finished wall. In this particular case the tolerance between your handrail and your rough wall or your metal lath wasn't sufficient to get three coats on. In other

words, some areas there was barely room to get your tile on plus about five-eighths of an inch. And so this was the plasterer's, Mr. Longshore claimed, in other words, he already had the scratch coat on, that this next coat or bed coat was their work, too, and if the tile setter put it on he had to cover it with tile the same day that he put his bed coat or float coat on. If it was did the same day the tile setters could do it but if he waited until the next day it was the plasterer's.

Hearing Officer: O.K. Mr. Carr?

Q. (By Mr. Carr) Was there any discussion as to the possibility of putting the tile on the same day? A. It was discussed, right. The tile setter claimed that if he put it on the same day it would be too wet for your quarry tile to bond to it. Quarry tile is a heavy tile and it has to be tapped on and would break your bond, your other coat wouldn't be set sufficient, wouldn't be sufficiently bonded to your scratch coat, and therefore it wouldn't be practical to put it on the same day.

[49] Hearing Officer: At the time of this meeting had the second coat already been applied?

The Witness: In this one little area it had.

Hearing Officer: In one area?

The Witness: Right.

Mr. Carr: I think I have no further questions.

Hearing Officer: O.K. Miss Thacker, do you have any questions?

Cross Examination

Q. (By Miss Thacker) Mr. Webb, you were present at this meeting that you described that took place on the, let's see, the 25th. Who requested this meeting? A. Mr. Ross, I believe, contacted—

Q. Mr. Ross requested it? A. Yes, Ma'am.

Q. And he requested that Mr. Longshore be there, and Mr. McHargue? A. Right.

Q. What was Mr. Longshore's request at that time? A. Well, that they go ahead and put this second coat on.

Q. Why. Why did he want that? What reason did he give? A. Well, he claimed that, as I recall it, a brown coat, in other words, a second coat, which was the plasterer's.

Q. And what kind of tile was to be set therein that area? [50] A. It was the same, quarry tile.

Q. It that a light or heavy weight tile? A. It's a heavy tile.

Q. You have been in the construction business a number of years? A. Right.

Q. Can you set quarry tile on a wet bed?

Mr. Capuano: I am going to object. I think we are getting away from what Mr. Longshore did. Why he did it, I think, would perhaps go to the merits of the dispute.

Hearing Officer: I think so, too.

Miss Thacker: Well, this has to do with the relevancy of the dispute and the claim that Mr. Longshore made at the time, and it has to do with the reason ultimately of Mr. Longshore putting on the picket.

Mr. Capuano: The picket, as I understand it, was on two days before this meeting.

Hearing Officer: Well, go ahead and develop it further, then. We will see where we go.

Q. (By Miss Thacker) Do you remember the question, Mr. Webb? A. No.

Hearing Officer: State it again.

Q. (By Miss Thacker) You say that the setter had put on his float coat? [51] A. Right.

Q. It was wet. The specifications called for quarry tile? A. Right.

Q. Can that be put on a wet setting bed? A. According to the tile men that installed it, it's not practical to. In other words, if the float coat hasn't dried enough to bond in, in other words, if you tap it or move it in any way, which would move in this case—in other words, if it was on a solid wall, it probably wouldn't, but on a lath, metal lath wall, there is some flexibility to it, and this quarry tile has to be tapped on, in other words, to

line up, and that would break your bond between your float coat and your scratch coat, and it would cause it to fall off the wall.

Q. Did they discuss the application of a third coat? A. It was discussed.

Q. And what was pointed out? A. That it wasn't room enough for a third coat to be practical to put on, in other words, some areas you wouldn't have any, at all, there would be less room for it.

* * * * * * * * * *

[55] Q. (By Mr. Capuano) Mr. Webb, do you know what type of contract Southwest had with Texas State Ceramic Tile Company? A. They were sub-contractors to install tile and terrazzo on the job.

* * * * * * * * * *

[56] A. No, sir, I do not.

Q. You don't know? A. No, sir.

Q. O.K.

Do you know whether it is a practice of Southwest to include Joint Board clauses in their sub-contracts? A. No, sir, I do not.

Q. You will have to talk up. A. No, sir, I do not.

Q. You do not know? A. No, sir.

Q. Now, you say Texas State, I will refer to them as Texas State, and I am talking about the Tile company. A. All right.

Q. They had the contract to do the tile work on the job? A. Yes, sir.

Q. Was there terrazzo work to be done, too, on the job? A. We had some terrazzo tread in the stairs only.

Q. I see. That was precast terrazzo? A. Precast terrazzo.

Q. Now, what tile work did they have in their contract? A. Ceramic tile in the rest rooms and the stairwells and floors in the rest rooms and stairs.

Q. All right.

So there was ceramic tile in the rest rooms in addition [57] to this quarry tile you talked about? A. Right.

Q. Now, I believe you indicated that some tile was caught up or the tile company was caught up in October '66 and then came back again in January to continue. A. Right.

Q. Now, what tile was caught up in October '66? A. All of the ceramic tile was completed at that time and the largest part of the quarry tile was completed at that time.

Q. The largest part of the quarry tile, too? A. Yes, sir.

Q. That is in the stairwells? A. Right.

Q. On the floors or walls, or where? A. On the walls.

Q. Was there quarry tile on the floors, too? A. Right.

Q. How many floors is this building? A. Eight stories and a basement.

Q. Eight stories and a basement.

How many rest rooms on each floor? A. There's two on all floors except one, and there is one on that floor.

Q. How many stairwells? [58] A. Four stairwells.

Q. Four stairwells?

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Q. Now, you described for us how the stairwells, the tile was put on the stairwells. Could you tell me how it was put on in those bathrooms? What was the innermost part of the wall first? A. You have got the same plaster, you have got your studs.

Q. Steel studs? A. Steel studs, with metal lath on all walls except one. You have got one wall was fastened on masonry.

Q. Was that the outside wall? A. Outside wall, exterior.

Q. Was that concrete block? A. Concrete.

Q. Just concrete? A. Concrete wall.

Q. All right.

You put metal lath on the studding and on the masonry, right? A. Right.

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[60] A. Well, they put it with a cement mastic that they mix up and put on the back of it and put it on it.

Q. Do you know the name of that mastic they used? A. No, I do not. I am not involved in that. It's mixed with the cement.

Q. This mastic was mixed with the cement.

Now, you talked about these handrails being put in by the iron workers on the 17th, on Tuesday, and then on Thursday the lath was put on. You are talking about the lath in the stairwells? A. Right.

Q. Now, was there concrete walls in some of the walls of the stairwells, too? A. Yes, the exterior wall, you would have one wall, right.

Q. Would be concrete and then the others would be steel studding with metal lath? A. No, most of your stairs, your exterior walls are masonry and your interior walls was metal lath with studs with the lath on them.

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[66] Q. Now, do you recall at this meeting on the 25th any comments being made by anyone to Mr. Longshore that he could fill in the voids in these walls in the stairwells, in other words, if the wall, after the mortar was put on by the tile setter, wasn't plumb, that he could— A. The walls were already completed at that time.

Q. No mention made of that? A. There was no work on the walls at that time.

Q. O.K.

Now, you said that the tile setter claimed he could not put the quarry tile on the wall the same day that the mortar was put on, is that right? A. And get a good job of it, no, sir.

Q. This is what the tile setter said? A. Right.

Q. And this is what you were going by, what he said?

A. Well, I figured him as a qualified expert, I mean, in [67] that line of work.

Q. Right. So you were paying attention to what he said. A. I was taking his judgment as being correct.

Q. O.K.

Now, you say there wasn't room enough for a third coat. A. No, sir, that's right.

Q. What did you mean by that, the thickness of the wall would be too great to put a third coat on? A. Well, you would have to see the wall to understand the situation. I mean, on the next job it might not be that way, but this particular place where your handrails went on, it was a metal piece installed inside the wall that you anchored to, which taken up possibly a half, three-eighths to a half inch of your wall space, and the tile and everything had to work over that, your lath.

Q. You had to anchor your handrail into what? A. Into the steel framing in your wall.

Q. To the steel framing, right? A. Right. You couldn't just anchor it to the plaster. You had to have a support in there. And this support taken a part of the wall where the plaster normally would have went or your back-up would have went.

Q. You mean that support would only be maybe a half an inch long so you couldn't go out two inches on the wall, is that what you are saying? [68] A. We only had an inch and a half, approximately, to start with.

Q. Right. A. Finish, that is, from your rough metal lath to your finished product.

Q. An inch and a half? A. Something like that, at the best. By the time you get your metal lath, scratch coat, and then if you protruded out another three-eighths of an inch with a piece of metal, you would have scant room to get a five-eighths space there left, and your tile is approximately a half-inch thick so you can see you only had—

Q. Was there any space there in the stairwells where you used more than an inch of mortar or an inch and a half of mortar? A. There's some places, yes, sir.

Q. Up to two inches? A. No, there's no place you had two inches. You only had an inch and a half to start with.

Q. Even on the masonry walls, is that right? A. Well, I wouldn't say there wasn't holes in there where you had that much depth. Usually rough concrete has three holes.

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[74] Recross Examination

Q. (By Miss Thacker) Mr. Webb, was there a work stoppage, a complete work stoppage, after the picket was placed? A. That's right.

Q. Was there still a work stoppage, a complete work stoppage, after the location of the picket was moved? A. That's right.

Q. And that continued until the time of the injunction? A. Well, it was a few of the crafts went back on to work but the majority of them was off until the injunction.

Q. Can you state to your knowledge that Texas State Tile & Terrazzo did give the work assignment and it was being carried out to the tile setters, members of Local 20? A. That's right.

Q. And can you state that demand was made in your presence or you were aware of a demand being made by Mr. Longshore that that work assignment be given to the plasterers? A. Right.

Hearing Officer: What work assignment?

Miss Thacker: According to the contract between Texas [75] State and Southwestern.

Hearing Officer: From your information that you know, what work assignment was Mr. Longshore asking for?

The Witness: He was asking for the brown coat or second coat of plaster on the rest rooms and stairs.

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[76] Q. And you knew what work Mr. Longshore was claiming, what work was in dispute, didn't you? Didn't you just tell the Hearing Officer what work Mr. Longshore was claiming? A. Right, in other words, he was claiming the second coat or brown coat of plaster there.

Q. Or the first coat on concrete block or masonry, right? A. Right.

Q. And the Joint Board award other than giving the wrong building name gave that work to Mr. Longshore, didn't it, and the Plasterers? A. Well, it depends on whether you was a plasterer or whether you was a tile setter.

Q. I am saying that, I think you understood what I said, I said that the Joint Board in that decision you saw gave the work to the Plasterers, didn't it? A. Right, but the Tile Setters had already informed they wouldn't abide by the decision before it was ever rendered.

Q. The Tile Setters said they wouldn't abide by the decision before it was rendered? A. That they wasn't a member, no.

Q. All right.

But you did understand what work the Joint Board gave to the Plasterers, didn't you? A. Not in that particular building. Our building wasn't [77] mentioned on it. I mean, what dispute they had in some other building, that had no bearing on the case there.

Q. O.K.

When Mr. Carr asked you the question I believe he phrased it assuming that the Joint Board had said the Anderson Library, right, isn't that the way he phrased his question to you? A. Something like that.

Q. All right.

So we were assuming we were talking about the Anderson Library in the Joint Board award, weren't we? A. I guess that's right.

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[80] JAMES K. ROSS

[81] was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Miss Thacker) What is your position and what company are you with, Mr. Ross, please? A. Vice President Southwestern Construction Company.

Q. Who has the sub-contract on the Anderson Library building at the University of Houston for the tile work? A. Texas State Tile & Terrazzo.

Q. Are you aware of what work assignment they made, to what craft they made the work assignment? A. Yes, I am aware.

Q. Who was it? A. To the Tile Setters.

Q. Were there any requests or demands made to you or to any of your employees by the business agent, Mr. Longshore, of the Plasterers for that work assignment? A. For part of the work the Tile Setters were doing. There was none made directly to me. I had heard from the job that there was, in late summer, a question about part of the setting.

Q. Was a picket established by the Plasterers? [82] A. There was a picket put on the job by the Plasterers, yes.

Q. What was the date? A. To the best of my knowledge it was in the morning of January 24, this year.

Q. Did you request a meeting with Mr. Longshore and the Business Agent of the Tile Setters and other interested parties as a result of this? A. I did. I think the following day, in the morning, I tried to get all the parties who were interested together to see if they could meet on the job and establish specifically what the questions were and try to resolve them.

Q. At that meeting did Mr. Longshore make his position clear to you as what his request was? A. I think reasonably so, yes.

Q. What was it, please? A. I might say that all the work that the tile contractor had to perform was, at that time, completed except for the balustrades and the stair treads, rises and landings, had been completed, and that the question remained at that time who should put the coat of plaster directly over the scratch coat on the balustrades of the stairwells.

Q. And he specifically asked that this work be assigned to the Plasterers? A. Yes, to my knowledge he demanded it.

[83] Q. Was there a work stoppage as a result of the picket? A. Unquestionably.

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[88] So even though this decision refers to the science building you knew that was a mistake and it was referring actually to the library building, didn't you? A. I would—I could assume that.

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[90] Q. And what type of contract did you have with Texas Tile? A. We had a lump sum contract for a prescribed amount, a defined work area of work.

Q. And did that— A. Which did include, which was based on the way the [91] specifications and plans were written.

Q. Did it have any provision in there for binding Texas Tile to the Joint Board? A. It did not.

Q. There was no provision saying that Texas Tile was bound by all the terms of the general contractor's agreement with the owner or anything like that? A. No.

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[92] Q. So as far as you know there was nothing in your own contract with Texas Tile binding them to the Texas Board? A. I know there was nothing—

Q. I can't hear you, sir. A. I know there was nothing in my contract, and I haven't found anything in my contract with the owner that would require it.

Q. Have you checked the general conditions to see if there was anything on settlement of jurisdictional disputes? A. Yes.

Q. And there was nothing in there either? A. I can't find it.

Q. O.K.

Now, you say that Longshore was asking for the coat of mortar on the balustrades, I believe is the way you put it. A. At the time I met him the only work remaining, as I told you, was, that the tile setter had to do, was the quarry tile on the balustrades.

Q. What are you talking about, balustrades, now? A. That's the center rail on the stair.

Q. Yes, I know that. Balustrades are usually small— A. Well, the dividing, this was a solid—

[93] Q. You are talking about a partition, aren't you? A. Small partition.

Q. Right. A. Handrail at the center of a stairwell.

Q. Right.

That was about four or five inches wide, was it? A. Well, I don't remember how wide.

Q. Yes.

They weren't individual posts that we were claiming? A. No, it was a solid, low wall.

Q. Right, solid, low wall. And what were the plasterers or what did you understand Mr. Longshore was claiming, then? A. An additional coat of plaster over the scratch coat.

Q. All right.

Now, this is what the Plasterers were claiming all along, wasn't it, the second coat of mortar on the scratch or the first on the block? A. I presume that is what they were, this was my first contact with him directly, and I presume that that is what he had a question about, yes.

Q You hadn't heard from anybody else prior to that? A. I had heard from our superintendent that there had been a discussion on the job prior to that time.

Q. And that was Mr. Longshore's claim, then? A. I didn't hear it directly from Mr. Longshore, but I think [94] that is where it came from, yes.

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[97] Q. You knew it applied to that job, didn't you? A. Probably so.

Q. Did Mr. Zambon tell you he even wrote to the Joint Board and told them they made a mistake in— A. I think he did, yes.

Q. So to finish my question, told the Joint Board that they had the wrong job listed on their decision, and your answer to that was yes, he did? A. Well, they didn't change it.

Q. Pardon me? A. They didn't change it even March 15, as I recall.

Q. That's right, they didn't change it, but he told you that he wrote this telegram or letter? A. I believe he did. I did not send them anything on it.

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[101] G. ZAMBON

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

Hearing Officer: Give the reporter your name and address, please.

The Witness: My name is G. Zambon, and I am President of the Texas State Tile & Terrazzo, Incorporated, of Houston, Texas.

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[102] Direct Examination

Q. (By Miss Thacker) Mr. Zambon, were you the subcontractor on the library building at the University of

Houston on which Southwestern Construction was the general contractor? A. Yes.

Q. What work assignment did you make in this particular contract? A. Assignment to—

Q. The craft, what craft did you give the work assignment to in this particular work? A. To the Tile Setters, Local No. 20.

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[103] Q. (By Miss Thacker) Was there a picket established on the job? A. Yes.

Q. And did all work stop as a result thereof? A. Right.

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Cross Examination

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[107] Q. O.K.

Now, you realize some time between the date of that telegram and sometime in January, anyway, that the dispute was really over the Anderson Library, didn't you, not a science building? A. Well, I presumed that is what it was, that is true. [108] I presumed it was over the M. D. Anderson Library.

Q. Right. And it was just a mistake on the Joint Board's part calling it the science building, or a mistake on somebody's part. A. That is what I presumed, yes, sir.

Q. Right. And in fact, in January you sent the Joint Board another telegram correcting it for them— A. Correct.

Q. —so that it would say Anderson Library, right? A. Correct.

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[110] Redirect Examination

Q. (By Miss Thacker) Mr. Zambon, you have stated for the record that you are not bound by any decisions by the National Joint Board. A. Correct.

Q. You belong to the local chapter of Tile Contractors? A. Yes.

Q. Do they bind themselves to the decisions of the National Joint Board? A. No.

Q. You are a member of the National Contractors Association? A. Yes.

Q. Do they bind themselves to any decisions of the National [111] Joint Board? A. No.

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[112] TOM ZAMBON

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

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[113] Direct Examination

Q. (By Miss Thacker) Mr. Zambon, what is your position with Texas State Tile & Terrazzo? A. Tile setter.

Q. You were foreman on the library job at the University of Houston? A. Yeah.

Q. Did Mr. Longshore, Business Agent of the Plasterers Local Union 79, ever approach you in connection with the work there? A. Sure, quite a few times.

Q. To whom had you made the work assignment? A. To the Tile Setters.

Q. To the Tile Setters, Local Union 20? A. To No. 20, yes.

Q. And Mr. Longshore asked you for the work, that it be assigned to his plasterers? A. Yeah.

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[118] Q. All right.

Now you are talking about over metal lath right where you put— A. Over metal lath, that's right.

Q. Right. And on the block there wasn't a scratch coat, just a coat of your mud. A. The block was the same thing, the stairwells over there, they were on mesh.

Q. Wait a minute, now. We are talking about the bathrooms. A. Well, you talked about the stairwells a while ago.

Q. No, I talked about the bathrooms. A. Well, the bathrooms I use the same principle.

Q. Yes, I realize that, but on the lath you had the scratch coat put on by the plasterers? A. That's right.

Q. And the coat you put on and then you put your tile on. A. That's right.

Q. And the concrete block, the wall that was the exterior wall, concrete wall, you put on just a coat of mud for the tile setters. A. Right, one coat.

Q. One coat, and the tile setters put that on? A. That's right.

Q. Now, how did you put your tile on? [119] A. With cement.

Q. What kind of cement? A. Cement that get a good bonding on my tile.

Q. You put that on the next day, though. A. The next day, yes.

Q. Did you wet your tile? A. Huh? They don't have to be wet.

Q. What did you use— A. Not the quarry tile. Quarry tile don't have to be wet.

Q. I am talking about the bathrooms. I haven't asked you about the stairwells. A. Well, you went back over on the stairwells on the exterior walls.

Q. I didn't say anything about the stairwells. You have an exterior wall in the bathrooms, too, don't you? A. Yeah.

Q. Well, that is what I was talking about. Now, what did you put in the cement that you used the next day? A. I used some compound there to slow my cement, that is all. I have been doing it for forty years.

Q. You have been using that compound for forty years? A. That's right.

Q. What kind of compound was it? A. Well, it's concentrate.

Q. What is the name of it? [120] A. Concentrate. That is what is the name of it.

Q. Has it got a commercial name to it? A. They have got a lot of different names.

Q. What kind were you using? A. Concentrate.

Q. That is the name of it, just concentrate? A. That's right.

Q. No brand name to it? A. No.

Q. No brand name on it? A. I don't know. What brand name it got? They have got concentrate on it. What is the difference, anyway?

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[122] Hearing Officer: On the record.

In an off-the-record discussion it's my understanding that where you have a concrete wall a coat of mortar or plaster, whatever you want to call it, is attached to the concrete wall. This is called a brown coat by the Plasterers [123] and a float coat by the Tile Setters. Now, is this work that the plasters are claiming as their work?

Mr. Capuano: Yes.

Hearing Officer: And Miss Thacker, is this work that the Tile Setters are claiming as their work?

Miss Thacker: Yes.

Hearing Officer: Now, in a situation where you have metal lath, a coat of plaster or scratch coat, which this is called, I believe, is attached to the metal lath. Now, to my understanding there is no dispute that this is Plasterers' work, but then another coat may be applied to this scratch coat, and this is called a brown coat by the Plasterers and a float coat by the Tile Setters. Now, this brown coat or flat coat, as it's called by the Tile Setters, do you claim this as your work, Mr. Capuano?

Mr. Capuano: Yes, we do except that I think we have to go one step further. I don't think we covered that in the off-the-record discussion. We claim it if the tile is not set on that brown coat the same day.

Hearing Officer: I see.

Mr. Capuano: In other words, if they can set their tile the same day in that brown coat, we also call it the

plumb coat, then we would not claim it or, as I said earlier, we claim it but we do not raise any dispute about it.

But if the tile is not going to be set in the brown coat [124] while it's still plastic or wet, in other words, you are going to come back the next day and set the tile, then we claim that brown or plumb coat, yes, sir.

Hearing Officer: I see.

Miss Thacker: It is our contention that it is irrespective of whether that coat is wet or dry, that it belongs to us, and that that is the decision of the tile contractor to make as to when he wants to apply his tile.

Hearing Officer: O.K. Well, we won't get into that.

Miss Thacker: No.

Hearing Officer: It's just the fact that you are claiming this work that we talked about.

Miss Thacker: Yes.

Mr. Capuano: Excuse me. That would also apply even when there is one coat on concrete walls or masonry, too. In other words, if they can apply their tile while it's wet, we would not raise any question about it either, and to clarify it a little further, when we said concrete walls that is what we had here, but we are talking about any sort of masonry, concrete block, clay tile, brick, even, if you have brick. In other words, any hard masonry surface.

Hearing Officer: I see. And so maybe the record will be clear, we talked about the conventional method that is used. So would somebody please describe that?

Mr. Capuano: Yes.

[125] In taking the same situation, metal lath over studding, you know what the studs are, the two by fours running up and down, or steel studs, you would have a scratch coat on the metal lath to stiffen it, one coat.

The second coat would be a plumb coat or brown coat, which would be put on to plumb and square the room, plumb the wall, make it straight.

Those two, I believe will be agreed, are Plasterers' work.

The third coat will be put on by the Tile Setters and he beds his tile in that. That is his setting bed. That would be the conventional method.

Miss Thacker: There is one qualification on that, which I presume was just an omission, that your final coat is scratched.

Mr. Capuano: Our final coat is scratched?

Miss Thacker: Yes.

Mr. Capuano: You are talking about the plumb coat?

Miss Thacker: In any application that you make.

Mr. Capuano: If the tile setter wants it scratched we scratch it, that's right.

Miss Thacker: Your final coat is scratched, according to the agreement.

Mr. Capuano: If it's supposed to be scratched, yes.

Miss Thacker: The agreement says it's to be scratched.

[126] Mr. Capuano: Well, the decision doesn't say it has to be scratched.

Miss Thacker: The 1917 says it has to be scratched.

Mr. Capuano: Look at the 1924 decision.

Miss Thacker: It says scratched.

Mr. Capuano: No, it doesn't.

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[127] Mr. Power: Mr. Hearing Officer, if we may, we certainly have no objections to using the words that we have to scratch the plumb coat.

Miss Thacker: All right.

Mr. Power: But being practical, being in the business, myself, many times a tile setter will say don't scratch it. It's in the agreement to be scratched for his setting bed, but many times they will tell you not to scratch it.

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[128] GEORGE LONGSHORE

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

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[129] Direct Examination

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Q. Did you learn that tile setters were performing work that you as a plasterer considered to be within your jurisdiction? A. Yes, sir.

Q. When did you learn that, approximately? A. Oh, I wouldn't know just exactly, Mr. Capuano, what the exact date was.

Q. Well, was it in the summer or fall of '66? A. Oh, no, it was definitely in the fall of the year.

Q. Fall of '66? A. Yes, sir.

Q. All right.

[130] And after you learned this what did you do, who did you talk to? A. I contacted the Tile Setters' business agent.

Q. All right. And what did you do next? A. And we met on the job.

Q. You met with the Tile Setters' business agents? A. Yes, sir.

Q. Anyone else? A. And Mr. Tom Zambon.

Q. All right.

And at that time did you make a claim for this work? A. Yes, sir.

Q. And did Mr. Zambon make any reply to you when you told him this was your work? A. Well, only to what Mr. Zambon's testimony here was correct.

Q. What did he say? A. That the work belonged to him and he was going to do the work regardless of when the tile was set.

Q. All right.

And after this were there any other meetings held on the job site? A. Doug and I met out on this job a couple of times.

Q. Doug who? A. The Lathers—the Tile Setters' business agent.

[131] Q. Over this same thing? A. Yes, sir.

Q. And— A. And then at a later date I met out there with out International representative, Mr. B. F. McCullen, and myself and Brother Doug, International Representative Joe Marsak, and at that particular time the superintendent of the building, I don't believe that Mr. Webb took any part in the conversation that was between the two International Representatives and the two Business Agent Representatives, but Mr. Webb was in the vicinity of this meeting.

Q. All right.

And did that meeting resolve this problem? A. No, sir.

Q. All right. And after that what did you do? A. I filed a Complaint and went through the regular procedures and filed a Complaint with the Board for the Settlement of Jurisdictional Disputes.

Q. The Joint Board? A. The Joint Board, yes, sir.

Q. All right.

Now, when you filed the Complaint did you file the Complaint with your International Union? A. Oh, yes, sir.

Q. And then they processed it for you, is that correct? [132] A. Yes, sir.

Q. Through the Joint Board? A. Yes, sir.

Q. Now, when you filed your Complaint with your International Union what name did you give to this job? A. Through an error of the Plasterers foreman on that job, that is where the science building and this library was a mix-up, I asked the Plasterers foreman on this particular job what was the name of the building, and he was working prior to this across the street, and through a fault of his he said the science building, or through a

misunderstanding of mine, we did call this library the science building.

Q. But you were referring to the library? A. Yes, we were both referring to the library, yes, sir.

Q. Now, when you got the decision of the Joint Board, and I assume you did get a copy of it. A. Yes, sir.

Q. I believe that is right in front of you as Plasterers' Exhibit 3, is it? A. Yes, sir.

Q. That is the decision of November 10th, 1966. A. Yes, sir.

Q. What did you do then? A. Well, I got hold of, probably went first out on the job and talked to Tom.

[133] Q. Tom who? A. Mr. Zambon. And as Tom says, they don't abide by the Joint Board decisions. And then I got hold of Doug, and I think it was about this time that we were talking about an agreement that existed that I didn't have a copy of. And I believe this is about this date. We went over to Mr. Zambon's office, and I don't recall the correct address of it, but Mr. Zambon wasn't in at this particular time, and that is the only time that I have ever been to their office.

Q. All right.

Did you ask Mr. McHargue to do anything after you got this Joint Board decision? A. Oh, yes.

Q. What did you ask him to do? A. Well, I asked Mr. McHargue would he abide by the Joint Board decision.

Q. And what did he say? A. And he informed me that he could not abide by the Joint Board decision.

Q. O.K.

Now, did you notify your International Union as to the Tile Setters' answer, that they wouldn't comply with the Joint Board decision? A. Well, I think that after I talked to Brother Doug and Tom Zambon, and they informed me that they couldn't abide by [134] the Joint Board decision, I also talked to Mr. Webb about this. Then I imagine the next day I put the picket on the job.

Q. On January of '67— A. After the decision was handed from the Joint Board.

Q. You mean after they told you—you say they couldn't comply with the— A. Comply with the Joint Board decision. And after the Joint Board rendered its decision and then I couldn't come to any agreement with Brother Doug or with Tom Zambon, then I did put the picket on the job.

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[152] ADOLPH N. MARTINI

was called as a witness by and on behalf of Martini Tile and Terrazzo Company, and having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Miss Thacker) What is your position with the Martini Tile and Terrazzo Company, please? A. I am president.

Q. Did you have a direct contract for certain tile installation at Rainbo Baking Company? A. Yes.

Q. To whom did you make the work assignment for this work to be done? A. To the Tile Setters.

Q. Do you have a collective bargaining agreement with them? A. Yes.

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[154] Q. In your contract with Rainbo are you bound by the National Joint Board? A. No.

Q. Are you a member of the local Tile Contractors Association? A. Yes.

Q. Are they bound by the National Joint Board? A. No.

Q. Are you a member of the National Tile Contractors [155] Association? A. Yes.

Q. Are they bound by the National Joint Board? A. No.

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[156] Hearing Officer: So let me read that over and see if we can get a stipulation as to that being the words:

"Plasterers Local No. 79 protests sub-standard conditions, Martini Tile Company, Incorporated. Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or a concerted refusal to work."

[157] Do you stipulate that that is what the sign said?

Mr. Capuano: Yes.

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[159] Q. And when did your men go back on the job? A. They went back the following week-end because Rainbo was tied up during the week. See, this is a remodel job and we had those people shut down for a while, and we couldn't work in the daytime, it had to be done in the latter part of the week when they could shut down a certain portion of their equipment, and we had to get in there and get out of it.

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Q. Then when did you start the job back up again, Mr. Martini? [160] A. We started the tile up the following Friday.

Q. The following Friday? A. Yes.

Q. So then it was from March 17 when the picket was initially put up and then you started up the following Friday. A. That's right.

Q. And you completed it. Or is there more work that you have to be done on that particular job, or are you completed with it? A. No, no, there is quite a bit of work that is going up there, and they are putting tile wainscoting from the floor to the ceiling, which is about twelve feet high, and we have to do it just at times when the spaces are available, that they can turn over to us, but they are going to tile the entire building before it's over with.

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Hearing Officer: I think, so that the record will be clear, I think maybe we ought to define the work that was being done by the tile setters at the time Mr. Longshore came to you.

Now, just briefly. Don't go into too much detail.

The Witness: Yes. I might explain it in this manner, that this is a remodeling job, and they have painted brick walls in there, and some of the paint is very heavy on there, [161] and rather than to chip the paint off and create a lot of dust hazard, and one thing and another, in the bakery, we elected to nail metal lath over the brick walls with concrete nails, and following that we put our setting bed on there, which was approximately a half inch thick. And then in floating those large walls up we had a lot of equipment to work around, and we had to go from the floor to the ceiling. In order to get a straight line, to strike our lines on the walls, to keep the walls straight, we used on top of the lath, we used wood lath strips that we float our mortar on in a conventional manner to form our setting bed.

Then when the Rainbo people would let us go back in there sometime the following day, sometimes a little bit later, we would set our tile on our setting bed. Sometimes we could do it the same day. Sometimes we couldn't.

Hearing Officer: This setting bed you are talking about is what you believe Mr. Longshore was referring to when he asked you to give this work to the Plasterers, is that correct?

The Witness: Yes, that is correct.

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[167] Hearing Officer: I think he described the process as having a painted brick wall and nailing some metal lath onto it and putting the setting bed onto the metal lath. Now, you may not use that in your terminology, but I think you understand what I mean. Is this the work that the plasterers would claim as their work?

[168] Mr. Capuano: If the tile was not installed on the same day, yes.

Hearing Officer: In other words, if it were not wet?

Mr. Capuano: Right, if it were allowed to harden and he came back another day and put tile on that coat of mortar with this L.&M. that he is talking about, we would claim that coat of mortar.

Hearing Officer: All right. Now, is this setting bed, is this work that is claimed by the Tile Setters?

Miss Thacker: Yes.

Hearing Officer: O.K.

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Cross Examination

Q. (By Mr. Shepherd) Mr. Martini, you said this meeting was held in the office of the Plasterers Union on the 20th? And when did the pickets go up on this job? A. That was on the 17th.

Q. 17th. How long were the pickets up? A. Oh, they were gone by noon out there.

Mr. Longshore: Three hours.

A. After we pulled our men off the job they had nobody to picket.

Q. (By Mr. Shepherd) Well, I mean, your men stopped because of the pickets, because of the great number of other [169] union men that were employed in the plant. A. That's right, we pulled our men off because we didn't want to embarrass our client out there, Rainbo Bakery.

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[173] HENRY BERTOLINI

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

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[174] Direct Examination

Q. (By Miss Thacker) Mr. Bertolini, what company are you with? A. The Bertolini Brothers Company.

Q. Is that in Youngstown, Ohio? A. Yes.

Q. And what is your position? A. President.

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[175] A. Two brothers, two other brothers and myself.

Q. Are you active in the National Association? A. Yes, I am Vice President of the Tile Contractors Association of America.

Q. And have you held other positions there? A. Yes, I have been a Regional Director for about four years. This is my second year as Vice President. I also serve as technical committee chairman.

Q. Are you connected with C.S.I., that is— A. Yes, I am a professional member of Construction Specification Institute. I am also a member of the American Society for Testing Materials.

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[179] Q. (By Miss Thacker) Now, Mr. Bertolini, will you identify the National Agreement of the Setters and briefly what it covers. [180] A. Well, the National Agreement, T-2, is between the Tile Contractors Association of America and B.M. & P.I.U. of America. This agreement is between our association and the Bricklayers to set out what constitutes the work that belongs to the craft known as the Tile Setters. It sets out the agreement, the days that it was in session, what the Tile Layers' work is to be defined as, what the parties agree to as far as workmanship of, I am sorry, the quality of the workmanship.

It defines methods of apprenticeship. It defines what working hours will constitute shift time.

It defines the method of bargaining at the lower level. It defines methods of arriving at, not arriving at, I am sorry, of setting arbitrations between member signatures of this agreement.

Q. Does it recognize the National Joint Board? A. It does not.

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[181] Q. (By Miss Thacker) Mr. Bertolini, are Martini Tile and Terrazzo and Texas State Tile & Terrazzo members of the National Association? A. Yes.

Q. So they are bound by this National Agreement which you have in your hands? A They are bound by the National Agreement.

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[183] Q. (By Miss Thacker) Now, Mr. Bertolini, have you observed [184] the laying of tile over a period of years, have you seen the craft at work and you have observed it? A. Yes.

Q. Closely over a period of years? How long? A. Since 1939.

Q. Is this a daily observation or a weekly observation or what is the frequency? A. Beginning from 1939 it was daily. And as the years progressed and I became an officer in the company, it diminished to probably two or three times a week.

Q. Now, do you have occasion in your capacity now and from the time that you came into the company to observe the plasterers at work? A. Yes.

Q. About the same, with the same frequency? A. Yes.

Q. So that you feel that you would be acquainted with the work of both crafts? A. I would say yes.

Q. Are you familiar with the various methods of setting tile? A. I am.

Q. Would you describe to us the conventional method? A. The conventional method is generally accepted to be three coats of mortar installed over a metal lath back-up [185] which has been scratched and if necessary plumbed by the plasterers. Both scratch coat and plumb coat are to be scratched. The tile setter then installs his final setting bed onto which the tile are installed.

Q. Now, are you familiar with the 1917 agreement between O.P. and C.M.I.A. and B.M. & P.I.A.? A. I have read it.

Miss Thacker: May I offer this in evidence at this point, Mr. Hearing Officer?

Hearing Officer: It will be marked as T-4.

Miss Thacker: Please.

Hearing Officer: Would you mark this as T-4, please?

(The document above-referred to was marked Texas State's Exhibit No. 4 for identification.)

Q. (By Miss Thacker) Now, this was an agreement between the two unions? A. Correct.

Q. Do you know—

Mr. Capuano: What are you reading?

Miss Thacker: The 1917 agreement, page thirty-two.

Hearing Officer: Why don't we get him to identify this book first to have the record clear. What is this T-4 you have in your hand?

The Witness: T-4 is a plan for settling jurisdictional disputes nationally and locally, and it's approved by the Building and Construction Trades Department, AFL-CIO, [186] agreements and decisions rendered affecting the building industry by the AFL, the Building Trades Department, AFL-CIO, the National Board for Jurisdictional Awards.

Hearing Officer: O.K., that is enough. Are you familiar with this book?

The Witness: I am familiar with the parts that pertain to the B.M. & P.I.U.

Hearing Officer: You have occasion to utilize these parts of the book?

The Witness: Yes.

Hearing Officer: O.K.

You may go ahead, Miss Thacker.

Q. (By Miss Thacker) All right. Now, this agreement is specifically between the two unions, is that right? A. This particular one, yes.

Hearing Officer: What agreement are you talking about?

The Witness: I am talking about the agreement—oh, I am sorry.

Miss Thacker: It's on page thirty-two, Preparation of Walls and Ceilings to Receive Title.

Q. (By Miss Thacker) Do you know of any agreement between the two unions that has been made since this 1917 agreement? A. I believe one in 1924.

Q. That is over here on page 104. A. 104.

[187] Q. Now, this is where they reaffirmed it. Now, this applies to the conventional method that you have just described—

Mr. Capuano: I am going to object, now. If he is an expert witness let him testify. Miss Thacker insists upon putting in her own comments and in effect testifying.

Hearing Officer: Sustained. Please don't lead the witness.

Q. (By Miss Thacker) Now, this agreement of 1917, does this pertain to the method, or what method does it pertain to? A. This agreement pertains to the method, to the conventional mortar method, commonly called in the trade as the mud method, which says that the plasterers do have the right to plumb, rod and square all walls and scratch same so as to guarantee adhesion of the final coal which shall be put on by the tile layers to act as a bed for his tile.

It further states that the same is applicable to all ceilings, that again that it shall be leveled and rodded and properly scratched so as to guarantee adhesiveness of the final coat which is to be applied by the tile setter and act as a bed for his tile.

Q. Now, is there anything different shown in the February 21, 1924 decision on page 104? A. I believe that it just confirms it, or reaffirms it.

[188] Q. Reaffirms it. All right.

Now, that has to do with the conventional method. Now, would you describe for us, please, the one coat or float

coat method? A. The one coat method is an abbreviation of the conventional mortar method, was devised for almost a specific purpose, of installing tile in remodeling work over back-up that was already in place. Having a back-up there which could be either brick, block, sheetrock, plaster, plastic tile. As long as there was a back-up there you applied expanded metal lath to this back-up. And in one procedure you installed a final setting bed for the ceramic tile onto which was installed, or which is installed the ceramic tile. This entire procedure is known as the one coat method. Normally in a bathroom a tile setter will go in and do this whole procedure in a residential bathroom in one day.

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[193] Q. (By Miss Thacker) Now, Mr. Bertolini, would you describe to us the thin set method? A. The thin set method is a method of installing ceramic tile over back-up walls with a bond coat. This can be a so-called dry set mortar. It can be an organic adhesive. It can be a epoxy. It can be a polyester formulation. But generally it is in those four broad classifications.

You use this material to attach tile to a surface prepared by others.

Q. This bonding agent that you have just described, these various things that it may be, can that in any sense be referred to or called a setting bed? A. We do not call it the setting bed because it in no way can determine the method or the finished appearance of the tile. I mean, I am sorry, it does affect the finished appearance of the tile, but since it is not under the control of the tile setter we cannot call the back-up wall the setting bed, so the adhesive line, the glue line, as some people call it in a derogatory mood, is used to adhere the tile to the back-up wall.

Q. Now, is there any difference in the guarantee which you as a tile contractor can give on the conventional method, [194] the one cost, float coat method, and the thin

set method. A. In the conventional method the tile setter and the tile contractor install the tile setting bed, which controls the finish line of the tile. Therefore, he must assume the responsibility of the finished appearance of the tile wall. When the tile contractor and his tile setter install the one coat method he also controls the setting bed of the tile and therefore must assume responsibility. In the dry set method, or the thin bed setting method—

Hearing Officer: That is the same method?

The Witness: Yes. In the trade there's three, you can call it the dry set method, the thin set, some call it the thin bed.

Hearing Officer: It's all the same thing?

The Witness: It's all the same thing.

Hearing Officer: Go ahead.

A. It's the way that someone has got the words out. It probably more properly is the thin set method. Now, the thin set, since you are installing tile over walls prepared by others, over which the tile contractor or the tile setter have no control, the tile setters through their union and the tile contractor being the employer, cannot assume the finished, the responsibility of the finished work of the tile because with the thin line of adhesive or a thin line of dry set mortar, the tile must, within certain minute [195] corrections which are possible, must follow the wall that is there. And therefore he cannot assume the responsibility for the quality of the work.

Q. (By Miss Thacker) Now, then, insofar as the bonding agents are concerned, with the advent of the organic and inorganic, has it made a difference in the setting of tile, any material difference? A. Well, the advent of dry set mortar has allowed tile to be installed in many instances where ceramic tile was not use before because by using the thin set method it was very easy to install tile over masonry walls in either Haytite block or cement block without the use of any other preparatory methods. And therefore, the architect could achieve a finished wall resembling a conventional mortar method in appearance,

but the finished appearance was not always as nice as the conventional method, but because of the savings in cost he accepted that.

So a title contractor was able to figure walls where we weren't able to figure before.

Also in remodeling it was possible in the thin set method to install tile using an organic adhesive over finished gypsum plaster that maybe had been in for years before and the home owner had just decided he could afford the money to put tile in and the contractor applied tile with this organic adhesive over finished plaster.

[196] Let's see, continuing, the other advantage of the invention of dry set mortar has been to allow the contractor the option of when installing tile in the conventional mortar method, because of the temperature or because of job conditions, to allow him to float his final setting bed and not necessarily cover that final setting bed while the bed was still plastic or wet, but allowed him to come back the next day and install the tile and still be assured of a bond equal to or better than he would have had the day previous.

There are time because of temperature that the final setting bed starts receiving its initial set before the tile can be properly adhered with a neat cement bond or neat cement or bond coat. And therefore the tile contractor through his tile setter defers putting the tile up but prefers to wait until the next day and set the tile using, again, either dry set mortar or a neat portland cement coat.

If on metal lath, more often than not, metal studs, because of the flexibility of the metal lath and the fact that a tile setter must beat his tile into the wall, the vibrations which occur would defeat the bond between the final setting bed and the scratch coat or the plumb coat that has been previously applied, he defers again the setting of the tile until the next day when his setting bed has firmed up enough that he can then apply the tile without disturbing his lines.

197] And, of course, job conditions would be to allow a tile setter to put up his final setting bed in areas where there is other traffic, where there is incovenience, and therefore he puts up his setting bed one day, comes back at a later time, even in the evening, or the following morning, and puts his tile up.

In the use of ceilings, it is extremely difficult to install tile in a wet mortar, and has been generally the custom of the trade to float his tile setting bed one day, either late in the afternaan, and come back the next day and prior to the advent of dry set mortar, install his tile with a neat cement coat.

With the use of heavy tile, such a quarry tile, hand-made faience tile, which is a relatively thick, heavy body, laid in the wet method because of the weight of the tile, it is extremely difficult to put tile on a wet setting bed, and again if it was on a metal lath where he even had to beat it, there were two reasons for him to withhold it, and it has been the custom of the trade for many years when installing heavy faience tile wainscoting or quarry wainscating to float out the final setting bed for the tile and come back the next day and set the tile with a neat cement coat, not dry set mortar or adhesive, but use a neat cement coat.

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[203] Hearing Officer: Well, then you will stipulate that these are the specifications with Rainbo Bakery?

Mr. Capuano: If Miss Thacker tells me that is all there is, I will take her word and stipulate to it.

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[221] Q. (By Miss Thacker) Are you familiar, or rather do the apprentices learn to put on a float coat? A. Yes.

Q. What per cent of their time, of their total time, as apprentices is spent in learning to do this? A. The major portion. It would be probably difficult to say the percentage unless you include the procedures that lead

up to the installation of the float coat, which start with learning the proper mixes for the different type of installations, how these mixes are to be made, how they are applied to the wall with a hawk and a trowel, the preparation necessary to plumb, rod and square a wall, the use of float strips, as we call them, or lattice strips, screed strips, they are all three the same, the use of a level, the use of a square, the use of the hawk and trowel, all pertain to applying mortar to a wall.

This is a major portion of a tile setter's apprenticeship program because this is the part that—I can't think of the word—which rules the finished appearance of the wall.

Now, also, of course, the apprenticeship covers the [222] same thing in floors, so what percentage I couldn't really say, but maybe forty per cent of his time.

Q. How long does he generally spend in learning to apply the adhesives or the bonding agent? A. A comparatively relatively short time. The apprenticeship program covers about four years of time, and in this four years he learns all of these different trades, sometimes working at a different portion of it for three or four months. The thin-set method is learned about the last three months of his apprenticeship since it should be learned after he has learned how to plumb, rod and square a wall, because there are applications when this is required and he must apply the tile in a thin-set method over these walls, but a majority of the time these are applied over other surfaces, and therefore the skill is much less.

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[224] Q. (By Miss Thacker) Now, in the 1917 agreement it says that the plasterers are to scratch, plumb, rod and square so as to guarantee adhesion of the final coat. Why is this necessary, Mr. Bertolini? A. For the reason mentioned, that unless the plumb coat is scratched you cannot guarantee the adhesion of the final setting bed.

Q. What would happen? A. You would not achieve proper bond and you—it is possible to get a delamina-

iton or what is a separation of the final setting bed and the plumb coat, and therefore you would have a faulty installation.

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[225] Q. Now, does the March '67 clarification of the Joint Board specify that the plasterers are to scratch the final coat— A. No.

Q. —that they apply? A. No.

Q. If this final coat that the plasterers apply is not scratched can the tile setters proceed with their float coat? A. They can, although it is not in the best interests of the job to proceed because you are not guaranteeing adhesion by keying in with the plumb coat. The tile, the final setting bed of the tile setter can adhere to a plumb coat that is not scratched, but to insure that it is going to key in and bond properly, it has always been the requirement that the plumb coat be scratched.

Q. Now, if this coat, the final coat, that the plasterers apply is scratched, can there be a thin set? A. No, because of the surface of the scratched surface, [226] the surface of the scratch is so irregular and rough and gritty that applying an organic adhesive would be futile. An epoxy would be the same. A dry-set mortar could possibly be done if you were to again treat the wall, but again the grittiness and the rough texture would preclude a proper finished appearance to the tile wall.

Q. Can you account for any reason that the term scratch is suddenly eliminated in this clarification when it is in the agreement between the two unions?

Mr. Capuano: Well, now—

A. I cannot.

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[227] Q. (By Miss Thacker) All right. The initial agreement between the two unions, the 1917 agreement, says that the final coat applied by the plasterers is scratched. [228] A. Correct.

Q. Now, in the clarification, March '67 clarification by the Joint Board, this is not an agreement between the two unions but a clarification, but it refers to the 1917 agreement, and the term scratch is deleted as to their final coat.

Now, I am saying with the deletion of this word scratch is it feasible from a construction standpoint for a tile setter, then, to apply his float coat if it's a conventional method—A. No.

Q. —or the thin-set? A. If it's a conventional method, no. If it would be the thin-set bed, yes.

Q. All right.

Then there would be, if it were thin-set, then who would be putting on the setting bed? A. The plasterers.

Q. And why? A. Because they are installing a back-up wall with a finished surface over which a one-eighth inch or maybe even as thin as one-sixteenth of an inch bond coat of dry-set, organic adhesive, can be applied.

Q. Now, according to the 1917 agreement, where it says that the plasterers shall plumb, rod and square, is this a [229] final or a preliminary plumb, rod and square? A. This has never been the final setting bed. The plumbing and rodding and squaring of the wall prior to receiving the final setting bed has been the work of the plasterer, but it has been scratched in order to guarantee the adhesion of the final setting bed. This is not the coat on which the tile are bonded.

Q. All right.

Now, in the March '67 clarification, we have a clause which says that if it's set during the same work day in which this is, and this is in quotes, "set during the same work day in which such coat is applied the plaster materials shall be applied by tile setters in the interest of efficient job operation."

Now, let's look at this particular terminology, Mr. Bertolini. Is it always feasible for a tile contractor to set tile the same day it's floated, the wall is floated? A.

There was never any ruling, there was never any mention in the agreement—

Mr. Capuano: Now, I am going to object. She asked him a simple question, is it feasible to do this. Now, we are getting what is in the agreement.

Hearing Officer: Try to be responsive to the question. Did you understand the question that she asked? She wants to know about feasibility.

[230] Mr. Capuano: The feasibility of setting tile the same day while the mortar coat was wet, is it feasible?

The Witness: Oh, yes.

Mr. Capuano: That is all that was involved.

Hearing Officer: O.K. Go ahead.

Q. (By Miss Thacker) Is it always feasible? That was my question. A. No.

Q. Why? A. Because of job conditions, because of time of the year which involves temperature, winter, summer, heat and cold, type of tile to be installed, and the area to which the tile are to be installed, would govern whether the tile could be properly adhered to the final setting bed on the same day.

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Q. Generally does a tile contractor like to float out his entire work—

Hearing Officer: I am going to—

Q. (By Miss Thacker) —first from the standpoint of job efficiency?

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[231] A. Yes.

Q. (By Miss Thacker) Why? A. Because he can minimize the amount of operations that a tile setter must do in one day. Rather than go through the entire procedure of floating, bonding and installing tile and cleaning down the tile wall, he would, in order to expedite and cut the cost of the finished product, install his tile setting bed in a large area continuously throughout [232] the day with the express intent of coming back

the following day and covering that area with ceramic tile.

Q. Now, you as a tile contractor who has been in business many years, would you be willing to submit to some rule or regulation which told you when you were to set your tile? A. No.

Q. Do you feel that that is your prerogative as to when you set it, whether you set it today or next month? A. Yes.

Miss Thacker: I believe that is all, Mr. Hearing Officer. Oh, wait just a minute.

Two more questions, Mr. Hearing Officer, please.

Hearing Officer: Go ahead.

Q. (By Miss Thacker) When the tile setter installs his float coat does he at that time establish the finished dimensions? A. That is one of the criteria.

Q. At the time when the plasterer puts on his final coat are these finished and completed dimensions the same? A. No.

Q. His is preliminary, then, I mean, the plasterer? A. Being a—may I elaborate?

Hearing Officer: Sure, go ahead. I think it calls for it. [233] A. Being that the plasterer is installing the plumb coat only, he would have no way of knowing what the final dimension requirements are, what dimensions must be met by the finished tile, since the setting bed regulates not only the final dimension but the appearance of the tile, the plumbness, trueness of line, cofrectness of pattern.

Q. (By Miss Thacker) Now, as an employer, as a tile contractor, do you have a preference as to work assignment to any one craft? A. Yes.

Q. Which one? A. We have, as an employer, assigned the scratching of the lath and the plumbing and rodding and scratching of the plumb coat to the plasterers and we have assigned the installation of the final setting bed and the bond coat and the tile to the tile setters.

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[234] Cross Examination

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[254] Q. O.K.

Now, would you get—do you have a copy of the green book there, T-4?

Would you look at page thirty-two, please? A. I am.

Q. I believe you testified on direct that the 1917 agreement pertains to the conventional method, is that right, of setting tile? A. Yes.

Q. Now, could you tell me if any place in that 1917 agreement it refers to the words conventional method of setting tile? A. It does not.

Q. How about the agreement listed on page thirty-three, [255] the agreement between the Interstate Mantel and Tile Contractors Association and the two unions, does that use the words conventional method any place? A. I have not read it but—

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A. It does not specifically refer to the conventional mortar method.

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[257] Q. All right.

Look on page 104 of T-4, would you, please? A. Yes, I looking at that.

Q. See the decision of February 21, 1924. Are the words conventional method of setting tile used in that decision? A. They are not.

Q. Now, do you as a tile contractor recognize this 1917 decision and 1924 decision? A. We generally have.

Q. You abide by it? A. Yes, we do.

Q. You assign your work when you are doing it—A. Yes.

Q. —like that, right? A. Yes.

Q. Do you know approximately when dry-set mortars came into being? A. Early '50s.

Q. Pardon me? A. In the early 1950's.

Q. Would it refresh your recollection if I said [258] approximately fifty-five or fifty-six? A. No more than that I just said because I am not positive as to the time because it was developed actually in this area and migrated throughout the country, and I can't say just when it really became a known product, such as dry-set mortar.

Q. O.K.

Now, going back to this T-4, what is the first thing that the agreement says must be done to the wall?

Hearing Officer: Are you talking about the 1924 agreement?

Mr. Capuano: No, I am talking about the 1917 agreement, page thirty-two of T-4. A. Well, it says here that, "First, it is agreed—"

Q. (By Mr. Capuano) No, I don't want you to read the whole thing. I just want you to tell me the first thing that must be done to the wall under the agreement, starting from the rough— A. "Shall prepare or plaster the walls."

Q. All right. And what would that include? A. It would include the plumbing, the rodding, the squaring and the scratching of same.

Q. All right. And then the tile setter would come and he would have certain things to do in this agreement or under this agreement, right? [259] A. Yes, it says here he would put on the final coat.

Q. It means he would put on the final setting bed, is that right? A. Yes, sir.

Q. And then the next thing would be the setting of his tile, right? A. Onto the setting bed.

Q. Yes, onto the setting bed. A. Right.

Q. So we have got four of five tasks outlined there, right, setting the wall, plumbing, rodding, squaring. A. Yes, some of those tasks are actually done simultaneously.

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[260] Q. Let's take a situation where the specifications provide on a job that you have got a concrete block wall, and the plasterers, or let's leave out the plasterers, let's just say a coat of mortar is to be put over those walls to plumb them, level them, square the room, and tile will be set with dry-set mortar. Follow me? A. I do.

[261] Q. In that situation isn't the wall being plumbed, the room being squared, the tile being set? A. If the work is done by the tile setter, yes.

Q. You are not answering my question. I didn't use any craft names. I simply said doesn't the room have to be plumbed, the wall, I mean the wall plumbed, leveled, the room squared, and the tile set? A. Well, when you say "have", you see, if you said "should"—

Q. Don't try to— A. I am sorry, but when you say "have to be," it probably should be, but whether it has to be is something else.

Q. The specifications provided that. So according to the specifications these things have to be done, don't they? A. All right. Yes.

Q. O.K.

So now we have got certain tasks that have to be performed, don't we? A. Yes. All right.

Q. Certain functions that have to be performed, regardless of who does them, they have to be done, don't they? A. To get the tile on the wall, yes.

Q. Right.

And the 1917 agreement provides certain functions that have to be done, doesn't it? A. Yes.

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[263] Q. (By Mr. Capuano) O.K. Let's take the American Standards Association. Do they recommend installing tile in the conventional method on a dry bed? A. Conventional method on a dry bed.

Q. Yes. A. No.

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[264] Did I understand you to say yesterday that in installing ceilings you put, again we will stick with ceramic tile, glazed ceramic tile, that you install those on a dry bed? A. Yes.

Q. Is that a recommended procedure by the American Standards Association? A. No.

Q. Do you know who the American Standards Association is? A. Yes.

Q. Who is it, or what is it? A. It is a group that are responsible by procuring from related people and trades who set up a method or a specification for the installation of that product.

Q. The recommended specifications for the industry, aren't they? They are the standards for the industry? A. They are a standard.

Q. For the industry? A. Yes, they are a standard.

[265] Q. As a matter of fact, they make specifications for the installation of tile in Portland cement mortars. A. They do.

Q. And personnel on the committee preparing the specifications include representatives of your group, don't they? A. Oh, yes.

Q. And it includes representatives of the Bricklayers, doesn't it? A. It does.

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[267] Q. Do you know whether in P-7 there are any provisions for installing of quarry tile or whether—let me cross that. Do you know whether P-7 recommends the installation of quarry tile on a dry bed?

Let me ask you this first— A. Do I know? Yes, I do know.

Q. You do know. Does it recommend setting quarry tile— A. No.

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[271] Q. (By Mr. Capuano) All right. I show you what has been marked as Plasterers' Exhibit No. 8 and ask you if you can identify that. A. Yes, I can.

Q. Would you tell us what it is? A. It's commonly known as A 118.1, American Standard Specifications for the installation of ceramic tile with dry-set Portland cement mortar.

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[272] Q. Did you read it? (c).

Does it refer to the dry-set mortar as the mortar setting bed? A. It refers to it as a mortar bed.

Q. I am sorry, mortar bed, yes, you are right.

And that is talking about the dry-set mortar which is going to be used to install the tile, isn't it? A. It is.

Q. Now, let's go over to page ten, Section 5-4.1. See that, Application of Mortar? A. (a), did you say?

Q. Yes. Well, that is what I want you to look at. A. "Mortar bed to be minimum of one-sixteenth inch.'"

Q. What mortar bed are they talking about? What is that mortar bed composed of? A. Of dry-set mortar.

Q. Dry-set mortar. And you are going to put your tile right on, there, is that right? A. Oh, yes.

Q. And there will be dry tile used? A. Yes.

Q. You can use a dry wall to put it on, correct? A. You can.

Q. How about over on page twelve? They are talking about floors there, I believe. I don't want to mislead you. [273] Do you see it? A. Thank you.

Q. See Section 5-5.1(b)? A. Mortar bed.

Q. Mortar bed. And they are talking about the dry-set mortar again, aren't they? A. They are.

Q. Now, if you look, if you go back to page three, you see a Section E-2? A. I do.

Q. Requirements of Related Trades.

Would you read (a) for us, please? To yourself. A. I have read it.

Q. It provides that certain work will be included in other specifications or for other trades, doesn't it, and that it includes those specifications in Appendix A in the back of the book, correct? A. It doesn't necessarily say other specifications.

Q. Well, all right, it says— A. It says of the appropriate section of the specifications.

Q. All right, for other trades? A. Not necessarily.

Q. All right. Why don't you turn to Appendix A and see what that is entitled. That is on page thirteen. What is that entitled at the top? [274] A. Related Trades.

Q. No, read the whole title. A. Oh, I am sorry. Requirements to be included in Related Trades.

Q. All right.

And do you see Section A-3 on page thirteen? What is the title of that? A. Lathing and Plastering Trades.

Q. And read it over to yourself, will you, please, quickly? A. I have read it.

Q. Down to about (d). Did you read that? A. All right.

Q. That provides, doesn't it, that when you are going to have a mortar back-up to tile for the installation of tile installed with dry-set mortars that the scratch coat or brown coat installed by the plasterers, doesnt' it? A. It does.

Q. And it provides for the brown coat of the plasterers to be plumb and square, doesn't it, plumb with square corners, in Section (c), Sub-Section (c)? A. Correct.

Q. Referring you again to P-8; who will, what craft will put on the mortar bed referred to on page five that you talked about? And it's also on page eight, page ten. A. The mortar bed will be put on by the tile setter installing [275] the tile.

Q. O.K. Now, getting back to your original statement. A. Which one?

Q. I am going to tell it to you. I was just looking for it in my notes. A. O.K.

Q. That the dry-set mortars are not called setting beds when the back-up is prepared by another craft. Do you recall that? A. I think I do.

Q. All right.

You disagree, then, with the American Standard Specifications, don't you? A. In a way I kind of agree with

them because they say it's just a mortar bed. They don't call it the final setting bed.

Q. All right, call it a mortar bed. You just told me that is what the tile is going to be installed in, isn't it? A. It is going to be installed into this, as you call it, the mortar bed. Wo do not call it such.

Q. The American Standard Specifications refer to it as the mortar bed? A. Correct.

Q. Doesn't it? A. Yes, it does.

Q. And the American Standard Specifications, P-7 and 8, [276] don't differentiate in the terminology of that bed regarding which craft puts on the back-up for it, does it? A. It does not.

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[280] Q. (By Mr. Capuano) Mr. Witness, we were talking before the break about a crooked door buck. Do you recall that? A. Yes, I do.

Q. You have had time to think about it now. A. Yes.

Q. Where your tile, you may have only half a tile at the bottom of the door frame, but because the door frame is crooked you have got three-quarters of a title at the top. Do you recall the situation? A. Yes, very definitely.

Q. The door frame would not look good, would it? A. It would not.

Q. Your tile would look crooked where it butted up against the door frame, wouldn't it? A. The cut would be out of plumb.

Q. You could see it, too, couldn't you, the difference between the half and the three-quarters? A. Yes.

Q. Your tile setters don't claim the installation of the door buck, do they? A. They do not.

Q. Now, you have installed tile wainscoting, haven't you? [281] A. Yes.

Q. And where above the tile is going to go some other material, for example, plaster. A. Yes.

Q. What other materials could go above the wainscoting? Marble? Would you have marble above it? A. Not generally.

Q. Not generally. All right. What are some other materials? A. Cement block.

Q. Cement block. All right. Let's stick with the plaster. You have got a situation where you have got tile wainscoting, plaster above it. You would generally have a casing bead between the tile and the plaster above it, wouldn't you? A. No.

Q. You say you would not? A. No, not generally.

Q. Not generally. All right. You have had casing beads separating the tile from the plaster, haven't you? A. We have.

Q. If the casing bead is crooked and the plaster runs down to the casing bead and your tile runs up to the casing bead, you are going to have small cut tiles on one end, larger tiles on the other other end, aren't you? A. This casing bead, now, runs horizontally?

Q. Horizontally, yes, that's right, horizontally. [282] A. And we are going to have cuts where, Mr. Capuano?

Q. Well, at one end of the casing bead that is lower than the other end you may have a full tile at the low end and at the higher end you will have to have pieces of tile. A. Why?

Q. If the casing bead is running at an angle, not straight, horizontally. A. You are presupposing something that I don't assume, and that is that we would cover the casing bead.

Q. I am not telling you you are covering it. I am saying you are going to run up to it. A. Oh, I am sorry. In other words, you are going to install the ceramic tile flush with the finished wall of the plaster.

Q. Yes, and you are running up to the casing bead and the casing bead is not, say, level. It goes on an angle instead of being level in a horizontal plane. A. Well, if tile had to be installed in that instance the cut on the top of the tile would be out of level.

Q. You could see it, couldn't you, if it was out of level enough? A. Yes, you would.

Q. Who installs the casing beads generally, what craft? A. If it's a metal casing bead I would assume it's the lather.

Q. Do you know if the tile setters claim the installation [283] of the casing bead where they are running tile up to it? A. No.

Q. No, they don't? A. They do not claim it.

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[284] Q. (By Mr. Capuano) Now, if I understand your testimony correctly, you as a tile contractor would guarantee the tile installation if you installed the back-up when dry-set mortars were to be used to set the tile, is that correct? A. We would.

Q. Now, when you are putting tile with dry-set mortar directly onto a concrete block wall, do you or do the tile setters claim the installation of the concrete block wall? A. We do not.

Q. Now, do you know if any other crafts, any other contractors on jobs, have to guarantee the installation of their work? I am talking about generally. [285] A. I would presume that they have some form of guarantee. Whether it's identical to ours I can't say.

Q. And would you say as a contractor that has been in business a long time that generally owners and architects require every sub-contractor, as well as general contractor, to guarantee the work he installs for a period of a year, one year? A. Yes.

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[287] Q. (By Mr. Capuano) Now, Mr. Witness, did I understand you to say yesterday that if a tile contractor installed the brown coat of mortar either on metal lath over the scratch coat or as the first coat on concrete block, for example, as was done in the bathrooms at the Anderson Library, then he came back the next day or two days or a week later, and installed the [288] tile with a dry-set mortar, did I understand you to say that that brown coat of mortar would be the setting bed? A. Yes.

Q. Even though the coat is dry, correct? A. Yes.

Q. Now, do the American Standard Specifications call the brown coat the mortar bed in the example I just gave you? Do you know? A. Does the American Standards Associattion call for the mortar—

Q. Do the American Standard Specifications— A. Which one, now?

Q. P-7. A. Oh, P-7. All right.

Q. No, I am sorry, P-8, the dry-set mortar, do they refer to the brown coat in the example I just gave you as a mortar bed or as a mortar setting bed, as you call it? You may look at it if you want. A. I couldn't answer that without an explanation.

Q. Pardon me? A. I couldn't answer that without an explanation.

Q. You couldn't answer that question without an explanation? A. Yes. I would have to see how the job is specifically specified.

Q. I will tell you. The specification call, you have got a [289] concrete block, the specifications call for a plumb coat of mortar, Portland cement mortar. A. Yes.

Q. Over that concrete block. A. Right.

Q. Then the tile is to be set with a dry-set mortor, L. & M., for example. You are familiar with L. & M.? A. The specifications specifically state dry-set mortar?

Q. Yes, dry-set mortar. And the tile contractor comes back after the coat of mortar is dry, the next day, a week, two weeks, puts his tile on the wall with the dry-set mortar. In that situation you indicated that the mortar coat or the brown coat was a setting bed, correct? A. If it's installed by the tile setter, yes.

Q. If it's installed by the tile setter, you say. It's not the setting bed if it's installed by the plasterers, right? A. Correct.

Q. Now, the American Standard Specifications make no distinction between who installs the brown coat behind the tile installed with dry-set mortar, correct? A. Correct.

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Q. That is all right. Now, let me ask you another [290] hypothetical question.

Let's take an example where the specifications provide that tile is to be installed in the conventional method, over wire lath, and the plastering— A. Over wire lath?

Q. Over wire lath. And in the plastering specifications it provides for a scratch coat, a brown coat, and the tile specifications it provides for a mortar setting bed. Set your tile in the conventional method. In that situation you would float your mortar setting bed on top of the plumb coat or brown coat of the plaster and you would install your tile right in that, correct? A. Yes.

Q. All right.

Now, supposing after the plasterer finishes putting on his brown coat, he has got a scratch coat on, he has put his brown coat on, now, under the American Standard Specifications for installation of tile and Portland cement mortars, P-7, it provides that the wall must be plumb, level, up to a tolerance of one-quarter of an inch in eight feet, correct? A. Yes.

Q. It does, O.K.

So after the plasterer puts his plumb coat on the wall, now, it's supposed to be the conventional method, you will recall, the tile setter is going to put the setting bed on, [291] the owner or the general contractor, the architect, decides that he wants this done faster or for any number of reasons, and he tells you, the tile contractor, don't bother putting on that mortar coat, put this wall up, install your tile with some dry-set mortar, Tec, L. & M. You go ahead and do that, right? A. We can.

Q. All right. When you do that what coat has been deleted? A. The final setting bed.

Q. Thank you.

Would you get T-6, please? I believe that is the ceramic tile specifications. A. I have them.

Q. Would you look at 15-4 of T-6? That is on page one, 1-1. A. Oh, I am sorry, I was looking at page 15-4. 15-4.

Q. You can read it to yourself. (a). There is only (a) there. A. I have read it.

Q. That is a standard type clause, isn't it, in specifications? A. Yes.

Q. And generally, so the record is clear, provides that you are supposed to inspect any work over which you are installing your work to make sure that it's O.K., and if it isn't proper [292] you are supposed to report it to the architect, right? A. Correct.

Q. In other words, if another contractor did something which you can't put your work over— A. Correct.

Q. —he will have to correct it, right? A. Yes.

Q. And if you go ahead and do your work you are accepting the prior work, correct? A. Yes.

Q. All right.

Now, look at 15-5, particularly (c). It describes a setting bed. Do you see that? A. Yes, I see it.

Q. Now, perhaps it would be better if you read right down to 15-7, not including 15-7, but I am referring to the sections entitled Materials and Laying Tile. I would like to ask you some questions about that. A. Down to 15-7.

Q. Right. A. I have read it.

Q. O.K.

Now, in your opinion what method, which of the three methods you described to us, is the architect requesting that the tile be installed through these specifications on [293] the Anderson job? Or if none of the three methods tell us. A. Well, it isn't specific enough to really define whether it could be the conventional mortar method or whether it might be the thin-set method because of (c) under 15-5 it says, "The setting bed shall be one part Portland cement and three parts sand, with two pounds of Stearox 100," which I am sorry to say I am not familiar with, "added to each sack of cement."

If this was not installed, and I don't know what purpose it serves this would normally be considered a pretty rich mix to use for the final setting bed, but as I

have said before, I have not seen the job, I don't know how it's installed, and I am not sure, but I would, based on that assumption, I will say that this is a conventional mortar method.

Q. Conventional mortar method. O.K.

So that would mean that the tile should be soaked. A. Would be.

Q. And it would be set in that mixture of what the architect calls the setting bed, consisting of one part Portland cement and three parts sand, right? A. If I may digress, the tile should be soaked if they are set the same day.

Q. Well, in the conventional method don't you set it the same day? A. Not necessarily.

[294] Q. Well, I guess we will go back, then.

Didn't we discuss this before about recommended methods of setting tile in the conventional method? A. I think you were talking about recommended by A.S.A., and I am talking about the way it is normally put in.

Q. All right. A. Because tile are installed under other specifications than A.S.A.

Q. All right.

Now, are you telling me that in the conventional method of setting tile the normal procedure is not to set the tile the same day that you put on your mortar setting bed? A. It can be.

Q. Now, listen to my question again. I believe you heard it.

The normal method, isn't the normal method in the conventional way to set your tile the same day you install the mortar setting bed? A. No.

Q. That is not the normal way? A. No, as of today, no.

Q. As of how long ago was it? A. Sometime after the advent and the use throughout the tile industry of dry-set mortar has it been accepted that the conventional mortar method allows you the option of allowing the final setting bed to harden and the tile can then [295] be ap-

plied with a bond coat of dry-set mortar. Now, this has been accepted and there are specifications, not A.S.A., I will grant you, but there are others who specify it that way, and they call it the Portland cement—I mean, I am sorry, the conventional mortar method, allowing the contractor that option.

Q. So you are using dry-set mortars in the example you are giving me in answer to my question about the conventional method. A. They are using dry-set mortar as a bonding agent, that's right.

Q. O.K.

Well, now, we will specify some more details for you so you don't have to get into the dry-set mortar. We are talking about the conventional method of installing tile as set forth in P-7, American Standard Specifications for Portland cement mortars. Are you with me? A. Yes, sir.

Q. We are talking about using dry-set mortars. We are talking about the conventional method set forth in P-7. A. Oh. All right. As set forth in P-7.

Q. Yes.

Q. Now, installing it in a conventional method, as I just described, the tile would be installed in the mortar setting bed the same day, wouldn't it? [296] A. As set forth in that, yes.

Q. Now, if this job were the conventional method, as I just described to you, the tile should be installed the same day that the mortar setting bed is installed, correct? A. I see no reference in this specification to A.S.A. specifications.

Q. Did you hear me put that in my question? A. That is why I can't answer you.

Q. All right. A. Because in your—

Q. I will try to make it so you can answer.

Would you please take a look at page 15-2, Section 15-6, Laying Tile, Section (a), and see if that is going to help you to answer my question?

Hearing Officer: What are you looking at?

Mr. Capuano: I am sorry, T-6. Those are the specifications for the installation of tile. A. It states there only as large an area as can be covered with tile before the mortar has reached its initial set shall be placed in one operation.

Q. (By Mr. Capuano) And you as a contractor would interpret, wouldn't you, the mortar they are referring to there is the mortar setting bed referred to back on page 15-1? A. Yes.

Q. So to get back to my question again, assuming, as you did, [297] that the architect is specifying the conventional method on the Anderson Library, the tile should have been set the same day that the mortar setting bed was installed, correct? A. According to these specs., yes.

Q. Thank you.

Did I understand you to say in your direct testimony that quarry tiles could not be set in a bed of mortar that was plastic? A. I didn't say they could not.

Q. Oh, you did not say they could not. A. I don't believe I said that.

Q. I am sorry, I wasn't sure what you said. A. Well, I mean, when you are telling me what I said it's hard for me to remember what I said.

Q. That's right, I understand that.

Well, in any event, you do know, don't you, that the American Standard Specifications, P-7, which you have in front of you, provides that when you are installing quarry tile, I am looking on page 20— A. That is all right, I am familiar with it.

Q. —that you should "float the mortar setting bed over areas no greater than may be covered with tile while the setting bed remains plastic." A. That's correct.

Q. You disagree with them again? [298] A. No, I don't say I disagree with them.

Q. O.K. You just say it could be done, is that what you are saying? A. I think I said before that it could be installed on a dry bed.

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[313] Q. I don't mind—O.K.

Now, when you say a wall is plumb, what do you mean by that? A. That it has a true surface so that when you put a level on it that it does not vary from a plumb line, which could be achieved by using a plumb bob and a string, it does not vary from that true surface.

Q. O.K. A. That is considered to be plumb.

Q. I agree with you. A. O.K. At least we agree on something.

Q. And what do you mean when you say that the wall is to be square? A. Two adjoining surfaces, two adjoining vertical surfaces, [314] must be in ninety degrees when measured with a square or with whatever you would call the instrument that a surveyor would use.

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[318] Q. (By Mr. Capuano) Now, when you do work now in new construction, new commercial construction, I am not talking about small buildings, I am talking about a good size project, like some of the buildings we see going up around here in Houston, are the buildings usually heated by the time you get in there, either temporarily or permanent heat operating? A. When conditions require it, yes.

Q. Many times the specifications require that there be heat in the building when you start doing your work don't they? A. If the outside temperature falls below a certain requirement, yes.

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[322] Q. No, no, I am asking you a particular example. I want you to take this particular case, a college dormitory where you had a bathtub, and you installed tile around it and around the bathroom part of it. Now, where did you put Portland cement in that bathroom? Did you put it around the tub? A. We installed Portland cement at a wainscot level around the room and to a six-foot level around the tub.

Q. All right.

Now, wainscot would be what, three to four feet? A. Probably four foot six.

Q. Four foot six. And six foot around the tub. Did that reach the ceiling? A. No, it does not.

Q. All right.

What was above the six foot and the four foot? A. It was installed later and it was a gypsum plaster.

Q. Gypsum plaster. All right.

So you had six foot over the tub, you had tile, correct? A. Correct.

Q. And you had Portland cement behind the tile? A. Yes.

Q. Did you have a coat of Portland cement or two coats on metal lath or something? [323] A. This was the conventional method and we installed the setting bed.

Q. O.K.

Then you had gypsum plaster above it? A. Yes.

Q. Did the plasterers put the brown coat below your setting bed? A. They scratched the metal lath.

Q. You put the— A. We did the plumb coat and the final setting bed.

Q. O.K.

And the plasterers up above your tile, around the tub, and around the wainscoting, put on a brown coat of plaster and then they put the white finish coat on, didn't they? A. Yes, they used the brown gypsum plaster rough coat, hair plaster, and then a gypsum white coat over the face of it.

Q. And they met your tile with their plaster? A. Yes.

Q. All right.

Now, would that be a common type job? A. I think so.

Q. O.K.

So in effect in that bedroom your tile setters didn't claim that gypsum, did they, above your tile? A. Never have.

[324] Q. So in effect you had two crafts putting on brown coats in the bathroom, one craft putting on a gypsum brown coat and another craft putting on a Portland cement brown coat? A. Portland cement float coat.

Q. I don't care what you call it. A. Plumb coat.

Q. One craft was putting on Portland cement and the other craft was putting on gypsum brown coat, weren't they? A. Well, unless the "were" is going to mean simultaneously, no.

Q. No, they weren't simultaneously. A. O.K.

Q. They had two crafts in there? A. Correct, two crafts would do the two types of work.

Q. You say this was a conventional job, too. A. Yes.

Q. So actually the plumb coat that your tile setters put on under the 1917 agreement, who would normally do that? A. Under the 1917 agreement it would have been the plasterers.

Q. So if they had done it they would have put on a gypsum brown coat and a Portland cement brown coat while they were in the bath, couldn't they? A. They could have, but they didn't.

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[326] Q. (By Mr. Capuano) Now, you say when a tile setter applies a float coat he can do it to finished dimensions, final dimensions, but you said when a plasterer puts on his final coat he doesn't know what the finished dimensions are going to be or his coat won't finish to the proper dimensions. Do you recall that? A. Yes.

Q. Now, I would like you to take a look at P-8, American Standard Specifications for installation of tile with dry-set mortars.

Look at page 13, Appendix A. A. I have 13.

Q. All right.

Look at Sub-Section A-3.1, Sub-Paragraph (e). See that? "Where tile to finish flush with plaster, apply brown coat behind tile of correct thickness to allow for tile and setting bed, so that tile and plaster finish will be flush."

Do you see that? A. Yes, I read it.

Q. Doesn't that say that the plasterer must put on his coat of mortar taking into consideration the finished line of the tile and to leave enough room for the tile contractor to put on the tile and the mortar bed, setting bed? [327] A. It so states, but that doesn't make it a fact.

Q. We are reading from the American Standard Specifications, aren't we? A. Yes.

Q. O.K. A. It says only that it will finish flush. That is only one dimension.

Q. To allow for tile and setting bed. A. Yes, to finish flush.

Q. So he has to know where the tile, what the finished dimensions of the room are going to be, doesn't he? A. The finished dimensions of the room? He may know the finished dimensions of the room.

Q. Wouldn't a plasterer putting on a coat of mortar on a wall, for example, that wall right there (indicating) where there is a door buck in it, he would have to know that your tile is only going to come, or your tile will finish a quarter of an inch recess from the door buck when he is putting on his plaster or mortar so that he doesn't put on two inches of mortar and bring you out an inch beyond the door buck, wouldn't he? A. You are asking—he should know that, and I agree, he should know that.

Q. That's right. All right. A. Yes, he should.

[328] Q. Look at P-7. That is American Standard Specifications for Portland cement mortars, tile installation. Look on page 27. A. I have it.

Q. Requirements to be included in Related Divisions, under Lathing and Plastering Division. Look at paragraph A-4.6. A. Yes.

Q. Doesn't that also provide that the plasterer should put on his leveling coat? A. Provides that it be scratched.

Q. Apply a level coat over scratch coat when necessary to meet requirements of A-4.5e or when a mortar

thickness of more than three-quarters inch is required to build out to finish tile surface. Scratch and cure leveling coat. A. Right.

Q. That is also providing that he has to know where the finished tile surface is going to go, doesn't it? A. Yes, there is a provision. There is a provision.

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[331] Q. (By Miss Thacker) All right. Now, then, Mr. Bertolini, would you look on page 104 as to the decision rendered February 21, 1924? [332] A. I have it.

Q. And the second paragraph there, would you read that to the comma. A. The second paragraph or the first paragraph?

Q. The second paragraph, starting "Plasterers." A. "Plasterers shall prepare or plaster walls and ceilings which are to receive tile."

Q. Now, would it be your interpretation that that would incorporate by reference, then, the August 22, 1917 agreement? A. Yes.

Q. That it would be adopting by incorporation everything that went into the original agreement, August 22 of 1917? A. I so believe.

Q. All right.

Now, then, let's go back to the 1917 agreement. In the first paragraph, but it begins with the word Second, then it says "All ceilings must be leveled and rodded and properly scratched." What does properly scratched mean to you? A. Scratched to a sufficient depth to guarantee the adhesiveness of the final coat. In other words, that would mean that although you might be able to scratch a level coat to many degrees, to be sure that you do get a good bond it must be firmly scratched, which would mean indentations of one-eight to three-sixteenths of an inch deep.

Q. Now, then, we have already firmly established, then, [333] the incorporation of this initial agreement into the 1918 agreement and in the decision on February 21, 1924, is that correct, from your interpretation? A. I think the decision rendered in '24 specifically says so.

Q. So that then the scratching, properly scratched, which was the initial agreement between the two unions, then, is incorporated by reference into these two subsequent or the one subsequent agreement and the first decision. A. Yes.

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Q. (By Miss Thacker) Then it says "the final coat which shall be put on by the tile layer to act as a bed for his tile."

And then we have in the next paragraph that begins Second, we have also, "the final coat which shall be applied by the tile setter and act as a bed for his tile."

Now, does this agreement, the terms of this agreement, tell us what the setting bed is to be made of? A. In 1917 ceramic tile was almost universally installed in a bed of Portland cement.

[334] Q. But does the agreement tell us or does the agreement specify what the setting bed is to be made of? A. Not specifically.

Q. Does the agreement tell us anything of the thickness of the setting bed? A. It does not.

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[341] Q. In connection with the American Standard Specifications, are they widely accepted or uniformly accepted? A. I would say yes.

Q. Are they uniformly accepted? A. No.

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A. It is not uniformly accepted.

Q. (By Miss Thacker) It is not uniformly accepted.

Now, how many methods of tile setting were known in 1917? [342] A. Basically one.

Q. What is that method? A. The conventional mortar method.

Q. Then would you assume that it was the conventional method to which the 1917 agreement was referring?

Mr. Capuano: I am going to object. What good is his

assumption of something unless it's based upon some facts of some expertise knowledge?

Hearing Officer: Well, I think you will have a chance on cross to delve into this, if you wish, but I am going to permit him to answer.

Mr. Capuano: O.K.

A. There being no other method of installation, you must assume that it refers to the conventional mortar method.

Q. (By Miss Thacker) Do you know of any agreements subsequent to this 1917 agreement, and then the 1918 agreement, which does not have the day or the month entered in the green book, by and between the two unions, the B.M. & P.I.U., and the O.P. & C.M.I.A. A. I know of none.

Q. This American Standard Specifications is dated October 16, 1958. Is there a revision currently being made? A. There is.

Mr. Capuano: Which one are we—excuse me, I thought you were referring—

[343] Q. (By Miss Thacker) I believe you stated that you were on the committee.

The Witness: P-7.

Mr. Capuano: P-7?

Q. (By Miss Thacker) I believe you stated— A. I am.

Q. And you have worked on the sections which have been referred to? A. I have.

Q. Are there revisions in them that differ from the way they are in the present form? A. They are being rewritten to take into consideration present methods in use by tile contractors throughout the United States.

Q. Now, does the thickness of the float coat or the setting bed vary? A. Yes.

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[351] Q. (By Miss Thacker) Mr. Bertolini, you have testified you have been in business, connected with this business since 1939? A. That is right.

Q. And you are familiar with the financial operation of it and the revenue connected therewith? A. Yes.

Q. Of your total operation in the bidding of your work how much comparatively entails or comprises or composes the float coat or the setting bed in your business operation? A. Well, last year I believe that we installed between thirty and thirty-three per cent of our tile in the conventional mortar method.

Q. What per cent in the one coat float coat? A. Hardly any. And the remainder would have been in the other two methods, or the other method, which would be the thin-set method.

Q. So then could we conclude, then, that if you did not have [352] the right to establish or to put in the float coat or the setting bed on this conventional method that you have had, that you would lose that, what portion of your business would that be? A. We would lose that portion of the thirty per cent which involve the installation of the final setting bed.

Q. Would that be a material part in the profit or loss of your business? A. I think it would be a definite problem in the loss of this part of our business since it generally involves the better quality jobs.

Q. The conventional method? A. Yes, yes. We are referring to the conventional method and because the elimination of this final setting bed would then, in my estimation, drop down the conventional mortar method jobs to an ordinary thin-set bed method, and that since these jobs generally involve quality installations, that they would then drop down in quality, probably loss of future specifications that would demand the quality of workmanship that I think can only be done when you install tile in the conventional mortar method and, of course, there would be the direct loss of that portion of the conventional method which would involve the final setting bed.

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[355] Redirect Examination

Q. (By Miss Thacker) Would you, Mr. Bertolini, be agreeable to continue putting on the float coat or the mortar setting bed if plasterers were to do the work? A. Probably not.

Q. Why? A. Because of the different methods employed between the tile setters and the plasterers in the installation of the final setting bed.

Q. You are saying the skill of the two crafts? A. I do not think the skill is equal.

Q. So then if you didn't care to have a collective bargaining agreement with the plasterers for that reason would you be able to give the same guarantee on your work if the plasterers put the bed in as if the tile setters put it in? A. Well, if the plasterers are working for me I would probably [356] have to give the same guarantee but, and I mention that I don't think that the plasterers and the tile setters have the same skill, I am specifically referring to only the installation of the final setting bed when I say the same skill.

Q. Yes, that is what my question was confined to. A. I don't want to be interpreted in the broad sense that there is an unequal skill.

Q. No, I limited it to the setting bed. So then if you do not feel that they have the same skills and you would prefer not to have a collective bargaining agreement with them, then you would not be apt to bid on those jobs which required a float coat or setting bed? A. I would not because the plasterer, if employed by me, would then be restricted to doing only one part of the work. I would use him for one day and then send him home. I wouldn't be able to use him to continue to set tile or in a bathroom he could only float the walls. Then when it came to the time of the installation of the tile he would be sent home. I would have to send another craft in his place.

When the time came to set the floors he wouldn't be able to do that. So I would have to hire a tile setter.

So this would be a very cumbersome method to install tile, even on a commercial job, when you would have to intermingle the trades under one, under the one contract.

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[369] Redirect Examination

Q. (By Miss Thacker) Is this the part that he had you read (indicating)? A. Yes.

Q. Would you read it again, please. A. "A. three thirty-second inch thick layer of dry-set mortar has twice the bonding strength of one-inch thick conventional mortar bed."

Q. All right. This three thirty-second inch layer of dry-set, is this referring to the bonding agent or is it referring to the setting bed?

Mr. Capuano: I am going to object. I don't think there is any word in there about bonding agent.

Miss Thacker: I have asked him the question.

Mr. Capuano: Well, there is nothing in there. She says does it refer to this and there is nothing in there that says it's a bonding agent.

Hearing Officer: Well, he ought to be able to answer it, I guess. If he can't he can't.

A. Oh, I can answer it. I was waiting to see whether I could or should.

Hearing Officer: Well, go ahead.

A. In the tile contractor's terminology, it refers to the bond coat because in the conventional mortar method we have the bond coat of neat Portland cement, and dry-set mortar [370] in the use, in the instance, or I am sorry, in the substitution of dry-set mortar in place of the neat Portland cement bond coat you have twice the bond strength.

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[415] ALLEN COLVIN

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

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[420] Q. (By Miss Thacker) Was there a picket established? A. Yes.

Q. And when did it go up? A. Well, we went to work at 8:00 o'clock, the men I had on the job, and approximately around 10:00 o'clock there was a picket put up on the job.

Q. And then what took place?

Hearing Officer: Well, first of all are we talking about the same day you had this conversation?

The Witness: Yes.

Hearing Officer: In other words, at 8:00 o'clock in the morning you had the conversation with Mr. Longshore and at 10:00 o'clock that same day a picket was established?

The Witness: That's right.

Hearing Officer: O.K.

The Witness: Well, immediately the people at Rainbo [421] Bakery called me and told me they could not have a picket on the job and jeopardize their bakery, so I immediately shut my job down in order to have the picket withdrawn, to protect Rainbo Bakery from any embarrassment.

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Q. That is what I wanted to get to.

Now, then, Mr. Colvin, will you tell us exactly what this [422] job consisted of? A. This job consisted of floating Portland cement mortar over a brick wall for the installation of ceramic tile in part of the baking area. The job was such that there was one long wall which had to bee floated, and I believe it was fifteen feet high.

At the present time we only had enough material in stock to cover six foot of the height of that wall.

The people at Rainbo Bakery who we had our contract with stipulated that they wanted that material, for sanitary conditions, to go six feet high, but they wanted all the mud floated so as to get rid of the mess in the bakery for health reasons. And that is what we proceeded to do. We floated half of the wall all the way to the ceiling. We put our tile up six feet high, and we were going to work a Saturday when the bakery was shut down to install the rest of our float coat and our tile.

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[423] Q. Now, could you define the setting bed that you installed on this job?

Mr. Capuano: He has not once used the word setting bed here.

Hearing Officer: Right. I think the record ought to be clear. Establish first of all—are you talking about a float coat?

Miss Thacker: We use it interchangeably. It's been stipulated to that.

Mr. Capuano: It has not.

Miss Thacker: We have used float coat or setting bed, mortar setting bed.

Hearing Officer: That is the same thing?

Miss Thacker: It's in the charge.

The Witness: Floating coat and setting bed is one and the same thing.

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[424] Miss Thacker: Yes.

Would you, Mr. Eagleston, read him back the question, please?

(The pending question read by the reporter.)

A. The setting bed on this job was installed over brick where we plumbed our walls, rodded our walls to a true, smooth surface, in preparation for the setting of tile.

Q. (By Miss Thacker) How long have you been a tile setter, Mr. Colvin? A. Since '38.

Q. You have worked at the trade this entire time? A. Outside of a few years I was in the Army.

Q. Has there been any change, to your knowledge, in the setting bed or float coat during this period of time? A. It's the same thing as when I started.

Q. Is it to the advantage of the tile setter and the tile contractor to float the work first? A. Yes.

Q. Why? [425] A. Well, due to the fact that tile comes in different sizes and shapes, you almost have to have your tile on the job for your lay-out, for your sizes, and so on and so forth, like on ceilings and jambs and headers and soffits. Some of this work even has to be prefloated because the humidity and the weight of the sizes of tile will not take in the same day that the preparation has been made.

Hearing Officer: May I ask him a question, what it means to float?

The Witness: To float, in our business, if we take, for instance, this wall, we set a wooden lattice strip up each end of this wall, plumb and square with the room, we take a hawk and trowel and float the Portland cement mortar in between these trips, a straight edge and rod it back to the strips to where you get a smooth surface to receive the tile.

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Q. (By Miss Thacker) This is T-8 for identification previously entered, dated March 15, 1967, clarification letter, with particular reference to page two, the second paragraph, where the Joint Board refers to the fact, or [426] rather makes the decision that the work that is set during the same work day in which such coat is applied the plaster materials shall be applied by tile setters in the interest of efficient job operation.

Is this feasible? A. No.

Q. Would you tell us why, Mr. Colvin? A. Well, like I said a while ago, humidity, sizes and weights of tile has

a whole lot to do with it, and at the same time it jeopardizes our contractors to the extent that we are placed to do so much work, maybe we have to go home at 3:00 o'clock in the afternoon because we can't float no more work because we wouldn't have time to cover it up, or maybe we have got to stay there and charge the man for overtime to stay there until after working hours to cover it up. It's impossible to lay your work out from day to day to give your employer a full eight hours work and say that you can float only so much and that has got to be covered up.

Q. Would you tell us how you actually go about applying the float coat and what you must take into consideration in its application? A. Well, first in consideration of the application you have to take the size of the tile, you have to have the tile on the job. To lay out your tile work you have several different kinds of trim pieces. They have to be measured [427] where your jambs and different things of your tile will fit. Some specifications call for full tile, or so on, around door jambs and stuff of such nature.

Without this tile and every factory that puts out tile, there are different sizes, you can't just pick up one piece of tile and say this is it because if this tile for this particular job comes from another factory it may be an eighth of an inch bigger in size, and you have to lay this work out, and I know on most all jobs I go on I lay my tile out on the floor and lots of times make me a guage stick and mark it for my measurements of my room, and without that you just can't do a float job good enough to receive tile good.

Q. To your knowledge is the tile available on the job if a plasterer puts on this bed? A. No, it is not.

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[432] Q. Now, on this March '67 clarification you stated that the decision as rendered by the Board, did you not, that it was the recommendation that it was tile

layer's work being what he could float and cover the same day, and you say this is not feasible. A. No, it is not.

Q. Why? What would happen? A. Well, first it's impossible to lay out your work to where you can give your employer a full eight hours work per day and still be limited to the time that you can go to work and do certain things and then turn around and cover it up—

Mr. Capuano: I am going to object. It sounds to me like it's repetitious of what he just told us.

Miss Thacker: Let him finish, please.

Hearing Officer: Let him go ahead.

Mr. Capuano: O.K.

Hearing Officer: Go ahead. Do you need to refresh your recollection where you were? Would you read—

A. Well, we have lots of instances on jobs where you have ceilings and arches and of such nature that has to be pre-floated. It's impossible to take a ceiling and float it and [433] put tile on it the same day that you float it out because the way we work with our tools, you float this out, although the material is hard, when you butter your tile and go to tapping it in smooth, it breaks the bond, and it won't stay there. It has to be set hard and firm where it will take the punishment of the installation of the tile work.

Q. (By Miss Thacker) What would happen if you would put quarry tile on a wet setting bed? A. It would sag, fall down. You see, your quarry tile, of course, what you call a wet setting bed, some setting beds are a lot wetter than others. It all depends on the time you give it to dry before you get started to work on it. But a quarry tile runs in sizes up to fifteen by twenty inches and two inches thick, and when you hang that surface with the weight onto a wet setting bed it just won't hold it.

Q. Now, if you are using ceramic tile, and you apply it on a wet float coat, and then you begin to work with the tile, what happens? A. It moves. It gets out of

line. It sags. And when the material does that you cannot straighten it up, you cannot make a uniform job. And through trying to get a smooth surface you break your bond and you just don't have a job.

Q. Now, where the plasterer puts on a skim or scratch coat and then the brown coat, is his final coat to be scratched? A. According to the 1917 agreement it's supposed to be [434] scratched. If you will read the article of agreement in the green book it will tell you.

Q. If this final coat, the plasterer's final coat, is not scratched, can you put on your setting bed, that is, if his coat is left smooth? A. Not and get a good bond.

Q. Why? A. Because the scratching of the surface is what, roughen it up, is what forms a good bond on your material. A slick surface, it dries out and it's slick, and it's easy to fall off.

Q. Are you aware of any requirement in the 1917 agreement that tells or specifies when the tile layer shall apply his final setting bed? A. There is nothing in the 1917 agreement that tells us when or how to get our final setting bed or the tile, either one.

Q. Is there anything in that agreement that you are aware of that says that the setting bed must be wet or dry at the time the tile setter applies his tile? A. It does not.

Q. Now, as to the bonding agent, itself, with the advent of the bonding agents currently in use, has there been any change, has this introduction of these agents brought about any technological changes?

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[435] Miss Thacker: Would you read back the question for him, please?

(The pending question read by the reporter.)

Hearing Officer: First of all, before you answer that maybe you better define for the Board, as well as myself or anybody else reading the record, what bonding agent is.

The Witness: A bonding agent is a material used to bond the two materials together.

Hearing Officer: O.K. Now, do you recall the question that the reporter read you?

The Witness: Yes, sir.

Hearing Officer: Would you answer it?

The Witness: Yes, there has been some changes to the extent that there's been a retarder put in the bonding agent whereas to allow you to work over hard surfaces or pre-floated [436] work that will not let your bonding agent dry out too fast. It cures on its own without any moisture taken out of it from the substance behind it or before it.

Q. (By Miss Thacker) Can the bonding agent in any sence be referred to or can it be considered a setting bed? A. No, ma'am.

Q. Why? A. Well, a bonding agent is strictly just—it's a material to stick the two materials together and bond it. Now, floating is a material you use to straighten up your wall, to plumb your wall, to square your room. And your bonding agents cannot be put on a surface over an eighth of an inch because it will run down to the floor, and it's impossible to try to straighten up any irregular, well, any way to straighten up any defects in a wall or anything of that order.

Q. Are you saying, then, that you cannot set your true dimensions with the bonding agent? A. No, we cannot.

Q. Now, where you, the tile setter, puts in the setting bed or float coat, can you guarantee your work? A. We do guarantee our work where we do our own floating and installation of our tile.

Q. Where some other craft has put in a coat of mortar prior to the application which you do of the bonding agent and the tile, can you guarantee your work in the same quality? [437] A. No, ma'am.

Q. Why? A. Well, work that is being performed in that manner is always the walls are irregular, they are

out of plumb, they are out of square. You have many defects in the walls that you cannot give a true, what we would call a satisfactory job.

Q. Could you tell us the actual process that you use to plumb a wall or surface after the plasterer has already rodded, squared and plumbed it? A. I don't know whether I understand the question.

Q. Well, I am assuming that some other craft, the plasterer, has put on a coat which is either his scratch coat or the brown coat, and according to the 1917 agreement it requires him to plumb, rod and square and scratch. Is this a preliminary or a final, so far as plumbing, rodding and squaring is concerned? A. No, because once he scratches the wall we are supposed to have approximately one inch to plumb and square and float our own wall to a true surface to receive our tile.

Q. So then you do additional work? A. Yes.

Q. Now, are there factors besides rodding, plumbing and squaring that you must keep in mind when you put on your float coat? A. Yes, you have to keep in mind your kinds of material you [438] are using for tile, the lay-out, dimensions and so forth.

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[440] Q. (By Miss Thacker) Now, Mr. Colvin would you explain the [441] use of the screed and the purpose for it? A. The screed we use to plumb on a wall for the purpose of rodding our straight edges over it that it won't dig into the mortar and leave a true surface.

Q. Now, in this particular job at Rainbo—

Hearing Officer: Excuse me just a second. Is this some kind of instrument that you use, a tool?

The Witness: The screed that we are speaking of in our business, we use a wooden strip. It's about an inch and a quarter by a quarter of an inch thick. We use these to plumb up a wall, then rod our float coat off of that.

Hearing Officer: O.K. You have got to remember, I am a novice or a layman at this terminology, and I would

like to know, and so would the Board, I am sure, what each of these terms is.

I am sorry, go ahead.

Miss Thacker: That is all right.

Q. (By Miss Thacker) Now, Mr. Colvin, on this particular job at Rainbo, what dimensions did you have to work to? I mean by that how much room did you have? A. We were instructed by Rainbo to hold our walls as close as possible so that we wouldn't bring them out any further than absolutely necessary, to straighten them up.

Q. Was there room for a coat to be applied by the plasterer? A. No. There was no room for this coat because on this [442] particular wall Rainbo has conveyors where there are bread pans and things run up and down on the wall that are sitting right practically on the wall, and we had to hold our material behind those conveyors to keep them from having a great cost of moving all their equipment out away from it.

Q. Now comparatively, I am speaking as to the time of the tile setter, what is the comparative time that it takes the tile setter to apply his float coat or mortar setting bed and the time that it takes him to put on the bonding agent and the tile? A. Well, a lot depends on what type of work. Ordinarily speaking, I would say sixty-five or seventy percent of your time is on your float coat, and the rest of that time would be for the installation of your tile work.

Q. Where does the real art of the craft rest? A. In the float coat.

Q. Did you come into the, come to be a tile setter through the apprentice program? A. Yes.

Q. How long did you spend, comparatively, in the program learning to apply the float coat? A. Three years.

Q. Out of a total of how much time for the total program? A. Our appentice program is a three-year program, and we serve the whole three years.

[443] Q. But are you saying, my question was about how much of that time did it take you to learn to prop-

erly put in the float coat or setting bed? A. I would say fifty per cent.

Q. Fifty per cent.

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[451] Q. Now, at the time that the plasterer puts in his final coat of plaster material, does he have before him the dimensions that's necessary to be known to set the tile? A. He does not have the tile to lay out any dimensions.

Q. So then he doesn't know, or rather should I say this, does the plasterer in installing this final coat of plaster material, does he have available to him the specs. for the laying or setting of the tile? A. Not to my knowledge.

Q. Is it possible for him, the plasterer, to plumb, rod and square in a final form without the specs. and the final dimensions which are required for the tile installation? A. I would say no and the reason I would say no is because if he don't have the tile and the shapes of the tile he doesn't know what the dimension is or anything else to float to make our tile work to certain points in certain areas.

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[452] Cross Examination

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[454] Q. Now, were you following any specifications on that job or were you just putting the mortar up or how was it being done? A. The job was floated in the regular manner like we always—

Q. Well, I understand that. But were you given any written instructions or specifications on how to do it? A. No, sir, Mr. Stevenson of Rainbo Bakery, who we have our contract with, instructs us as to what he wants in the area he wants covered, and so forth.

Q. Who is Mr. Stevenson? A. He is the chief engineer and chief building construction [455] man for Rainbo.

Q. And he told you what he wanted covered? A. Right.

Q. Did he tell it to you? A. Yes, sir.

Q. And you told your men what to do? A. Right, sir.

Q. But you didn't receive any written specifications or instructions how to do this? A. No, sir.

Q. Let me show you what has been marked T-7 and ask you if you have ever seen that before? A. This particular item I have never seen, no, sir.

Q. Do you know what it purports to be? A. I believe I do, yes, sir.

Q. What does it purport to be? A. It's a system for us to install our tile.

Q. What is it entilted? A. Sir?

Q. What is it entitled? A. What is it entitled? It's entitled Specifications.

Q. For the Rainbo Baking Company job, isn't it? A. Right.

Q. You have never seen it before? A. No, sir.

[456] Q. You were the superintendent on the job? A. Right.

Q. Now, would you tell me again just what you had to do on that Rainbo job? What work were you doing? I am not talking about the particular task of putting up screeds. I want to know what work you as a representative of Martini or Martini Tile Company had to do on that job. A. On that particular job my job was to see that I got men on the job.

Q. No, that is not what I mean. I mean the actual work, you had to put tile on some walls, I understand. A. Right.

Q. All right.

Now, tell me where the walls were, the kind of tile you were putting on, and what else you had to do as part of Martini's job there. A. Well, first we put metal lath—

Q. No, no, tell me where you were putting this stuff. In other words, I am trying to get a picture of what Martini did in this bakery. Now, you have got a big

room, I presume, with some baking machines. A. In the panning room.

Q. In the panning room? A. Pan, panning room.

Q. Panning room. That is where they bake bread, right? [457] A. Right.

Q. All right.

You had to do some work in the panning room. What work did Martini have to do there? A. Install some tile.

Q. Where? A. On the two outside walls in the panning room.

Q. All right. Now, how big were these walls, how long? A. I would say one of these was forty feet by fifteen and the other one was approximately sixty, sixty-five feet by fifteen.

Q. All right.

And Martini had to install tile on these two walls in the panning room. Now, I wasn't quite clear on what you said. The tile went up six feet? A. The tile went all the way to the ceiling, but at the time of the installation, which the job is there right now without it all the way up, we only had enough tile to go six feet on these walls. The other is on order, which will be installed when it arrives in the city.

Q. All right.

I think I have got the picture now. You had these two big walls, you tiled up six feet, but you put mortar above the six feet to the ceiling, which is about fifteen feet? [458] A. We floated it all the way to the ceiling.

Q. All right. You call it floated. And are you going back at some later time and going to put the tile from six feet up to the fifteen foot ceiling when the tile comes in, is that what you are saying? A. That's right.

Q. All right.

Now, was this glazed ceramic tile? A. It was four and a quarter by eight and half glazed ceramic tile.

Q. Four and a quarter by eight and a half? A. Right.

Q. O.K.

One piece, you mean, four and a quarter by eight and a half? A. Right.

Q. O.K.

Now, when you go back, when you go back to put up the rest of the tile, the walls you have got there will be as dry as the wall right in this hearing room, walls in this hearing room, won't they? A. They will be dry, yes, sir.

Q. All right.

Now, tell me how you will go about putting on the remainder of the tile above the six feet when you go back. [459] A. Our bonding agents that we have today has a retarder. The wall above what we installed will be installed exactly the same as the six foot already on there.

Q. Now, I will ask you again. How will you go about putting the tile from the six foot up to the ceiling? What will you use? A. We use L. & M.

Q. L. & M.? A. Concentrate, Portland cement.

Q. All right. You say concentrate. You mean you will put that concentrate in something else or will you use it just as it comes, or what? A. The concentrate is, in itself, is a retarder that we put in the Portland cement which we use as a bonding agent.

Q. You mean you will take a bag of Portland cement and you will add something to it? A. Right, the retarder.

Q. You will take this L. & M. concentrate? A. Right?

Q. Add it to your bag of Portland cement, mix it with water? A. Right.

Q. And then you will put it on your wall with a notched trowel, huh? A. Right.

[460] Q. That is the wall above the six foot. A. Right.

Q. And then you will put your tile right in that, is that the way you will do it? A. That's right.

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Q. If you wanted, if you found a little place there that wasn't quite level, you could add some sand to it, use

it as a leveler, couldn't you? A. Not to use as a leveler, no, sir.

Q. You couldn't use that as a leveler with a little sand in it? A. No, sir, you cannot.

Q. All right. How long have you been using L. & M.? A. Since it came out. I believe in the 1950's sometime, '55, '56. This material can't be used as a leveler. In the first place it sticks to a straight edge. You cannot rod it and make a smooth surface. In the second place, if you put it on heavy, it runs down the wall.

Q. All right.

Are you aware that L. & M. takes a contrary position from you and says with some sand in it it can be used as a leveler? [461] A. I have read some of their specifications.

Q. But you say what they say isn't right? A. I do for a fact because I have tried it.

Q. O.K. And L. & M. was made or developed right in this area, wasn't it? A. I believe in Waco, Texas.

Q. By Mr. Montgomery? A. Yes.

Q. And Mr. Love. A. Right.

Q. That is where it got its name, wasn't it? A. Right.

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[463] Q. Do you know if the Tile Contractors of America have ever taken a position that dry-set mortar such as L.&M. can be used for leveling and clearing up irregularities in the walls that you are going to put tile over? A. Well, we are speaking in a broad sense. It all depends on what you mean by leveling, and so on and so forth. I am saying this, you cannot take L.&M. and put it on a wall three-eighths to a half inch thick to level or plumb something with.

Q. Oh, now you are talking about three-eighths or a half inch. I don't recall that I said that in my question, did I? A. No, you didn't.

Q. But that is what you meant, you can't use L.&M. like you would use a thick setting bed, is that what you are saying? A. No, you can't.

Q. All right.

But are you agreeing with me now that it can be used to [464] level minor irregularities in a wall? A. That depends on how minor.

Q. How about three thirty-seconds of an inch? A. I would say yes.

Q. It can be. All right.

Now, would you say the bonding strength of three thirty-seconds of an inch of L.&M. is comparable to about an inch of conventional mortar bed? A. I would. I would say it might be even greater.

Q. It might be greater. A. That's right.

Q. That means it's going to hold the tile on the wall better than that thick mortar bed would, wouldn't it? A. The thick mortar bed won't hold tile on the wall.

Q. The thick mortar bed won't hold tile on the wall, itself? A. No, sir.

Q. All right.

There is going to be a greater bond between the tile and the mortar with this L.&M. than there would be if you are putting it in a thick bed, correct? A. Well, I don't know as I understand what you are talking about, trying to get to.

Q. All right, let me change it for you again.

Let me ask you something else. We will come back to that. Did you use a lather from the very beginning of that [465] job? A. Use a what?

Q. Lather. A. Lather?

Q. Yes. You said you used a lather for two hours and then they struck and then you used a tile setter, but you didn't tell us who was doing the work from the very beginning, putting up the metal lath. A. We started it.

Q. Who is we? A. The tile setters I had on the job.

Q. Oh. Then you switched to a lather? A. Right.

Q. Now, what sort of lath are you using here? A. Metal lath.

Q. What does that look like? Is that the same as the expanded metal lath? We had some testimony about that.

A. No, you might interpret it that way, but I wouldn't say it was expanded metal lath.

Q. What was it, then? A. I wouldn't know how to explain it.

Q. What did it look like? Did it look like chicken wire? A. No, it's a lath with little, small quarter-inch holes in it.

Q. You mean it's pieces of metal with quarter-inch holes [466] in it? A. Right.

Q. And you nailed it right to this brick wall? A. Right.

Q. Now, you said you put your mortar on the wall. How much mortar did you put on the wall in this mortar coat? A. I would say an average of a half inch.

Q. A half inch. And you said you plumbed and you rodded the wall, correct? A. Right.

Q. And then did you set your tile the same day or did you come back the next day or several days later and set your tile? A. We set some of it that day. We set some of it the next day. Fact of the business, we set some of it a week afterward.

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[467] Q. All right.

Now, I am going to show you Plasterers' Exhibit 11, which purports to be a booklet put out by the L.&M. Company on thin-set methods. Now, this is the same company that produces the concentrate that you use, isn't it? A. Yes.

Q. I am going to ask you to look at page six, Section III, Installation. I have it marked here.

Do you see that, where it says A, "Setting bed to receive tile"? A. Yes, sir.

Q. See the section? A. Yes, sir.

Q. Would you read that to yourself? A. (Witness complied.)

Q. Now, the setting bed to receive tile that they are talking about there is the L.&M. that you used, isn't it? A. No, sir.

[468] Q. It isn't? What is the difference between what you used and what is listed there? A. The setting bed to receive tile.

Q. Isn't it true that L.&M. calls its product which you used a setting bed and you call it a bonding agent? A. They call it a setting bed, they call it thin-set.

Q. I am asking you what L.&M. calls it in Plasterers' Exhibit 11, on page six, Section III. A. Well, it says setting bed to receive tile, mortar to be mixed thoroughly and applied in strict accordance with manufacturer's recommendations. Minimum thickness of setting bed to be three thirty-seconds to one-eighth maximum.

Q. That's right. And they are talking about the same material that you are going to float on that wall with your notched trowel and put your tile to above the six-foot level when it comes in, aren't they? A. That is what they have reference to.

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[475] Q. All right.

Let's take the normal practice. When you put your final setting bed on, isn't the recommended procedure, talking about the conventional method, to apply your tile the same day that you put that setting bed on? A. A bathroom wall we tried to put it up the same day, yes.

Q. That is the recommended way, isn't it, in a conventional method? A. I don't believe it says anything in this book anywhere that it recommends that we put up our tile the same day we float it.

Q. Did I ask you any questions about that book? A. No, sir. You asked me if it was recommended.

Q. That's right. A. Well, I don't know anywhere where it says it is recommended.

Q. Let me show you a place. You have heard of the American Standard Specifications, haven't you? You have seen specifications for the installation of tile, which is P-8? A. I have.

Q. I am sorry, P-7.

I am going to show you P-8, page eight. It's under American Standard Specifications for Glazed Ceramic Wall Tile [476] Installed in Portland Cement Mortars, Section 1-2, Walls, 1-2.3, under the Workmanship and Application. Look over 1-2.5d. Read that to yourself. Just d. A. (Witness Complied.)

Q. Did you read it? A. Yes, sir.

Q. And you say that is not a recommendation that you are not supposed to put tile, glazed ceramic wall tile, on a mortar bed that isn't still plastic? A. Back in the time when this was written we tried to cover our mortar beds when they were still wet.

Q. How long ago do you think this was written? A. I don't know.

Q. 1958.

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Q. (By Mr. Capuano) In the conventional method, isn't that [477] correct, what I just said, the recommended procedure is to install it the same day while it's still plastic? A. If possible.

Q. Is it or isn't it the recommended procedure? A. Yes.

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Q. (By Mr. Capuano) Did I understand your testimony that on page two, paragraph 2 of the Joint Board's award, that you said it was not feasible to apply tile to walls the same day that the float coat is applied, as the Joint Board says in there? A. Yes, sir.

Q. Didn't you just finish telling me that in the conventional method the recommended procedure was to apply tile the same day that you put the mortar coat on the wall? A. Yes, sir.

Q. But still you say it's not feasible to do that very procedure? A. Well, we are talking about two different things here.

[478] Q. No, we aren't. We are talking about applying tile the same day that you apply the mortar coat.

A. You can apply the tile even the same day as you apply the mortar coat.

Q. The way the Joint Board said you could, can't you? A. It can be done.

Q. All right. A. Some circumstances this can't be done.

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[479] Q. Now, you said that there are certain advantages of floating a wall out first, as I recall. Now, when you are using these thin-set mortars like L.&M., Crest, Laticrete, you don't have to soak your tile, do you? A. No.

Q. The conventional method you had to soak your tile before [480] you put it in, right? A. We soaked it, yes.

Q. That is a big advantage, isn't it? A. Yes, but today the conventional method the tile doesn't have to be soaked.

Q. Now, will you let me ask the questions and you give me the answers? A. Well, maybe I misinterpreted you. You asked me if the conventional method, whether we had to soak our tile or not.

Q. And you said yes. A. Well, today the conventional method if you talk about putting it up over wet mortar, we don't have to soak it.

Q. If you use one of the thin setting bed materials, correct? A. If we use L.&M. or Kaiser, Crest.

Q. That's right. A. Right.

Q. O.K. I think we are in agreement.

You say it's impossible to lay work out day to day, give your employer a full day's work. I believe that was your testimony, wasn't it? A. That's right.

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[485] Q. (By Mr. Capuano) Now, Mr. Witness, you say unless you put on the float coat, as you call it, that you can't do a good job with your tile, that you measure out your tile and you do this apparently when you are

putting on your float coat. Is that what you were trying to say? A. I believe when we float our work we lay out our tile.

Q. All right.

So in other words, if you got this wall over here, you would lay out your tile so that maybe you would get a half [486] a tile at the door buck, something like that, is that what you are telling me? A. That and the height.

Q. And the height. All right.

Now, supposing we had a sheetrock wall over there or dry wall, do you know what I mean by sheetrock? The reporter can't get your nod. A. Yes, sir.

Q. And you had the same door bucks in there. Now, when you were going to put tile on the sheetrock you would use some sort of thin setting bed material, either an organic or an inorganic compound, wouldn't you? A. You have to use some kind of a bonding agent to make it adhere to the wall.

Q. All right.

We would use something like L.&M. or Crest or one of these products, right? A. Right.

Q. All right.

Now, would you also lay out your tile so that you wouldn't wind up at the door buck with only a third of a tile? A. Yes, sir.

Q. You would lay it out the same way, wouldn't you? You would measure that wall so you wouldn't wind up with a little [487] bit of a tile at the top or a little bit of a tile at the door buck, right? A. I would.

Q. You would try to get, maybe, take it up in the joints, spread your joints a little bit, or pull them together, or something like that, wouldn't you, joints in the tile? A. I would try to center the wall and work from both ways.

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Q. All right.

[488] Let me ask you this, supposing the specifications said that tile is to be installed in the setting bed which

is to be three-eighths of an inch thick, a half inch thick, while the setting bed is still plastic. What would that mean to you? A. That means just what it says, while it was still plastic.

Q. Would it be plastic a week later? A. No, sir.

Q. It would be plastic the same day, wouldn't it? A. Yes, sir.

Q. And you should put the tile in the same day, right? A. Yes, sir.

Q. According to you that is not feasible, is that correct? A. Not in all cases.

Q. Oh, not in all cases.

So in other words, your opinion regarding T-8, the Joint Board award, is actually that there are cases it isn't feasible to install tile the same day; is that what your testimony amounts to? A. There's jobs you can't install the same day.

Q. But it doesn't apply to all jobs, by any means, does it? A. No.

Q. And that same answer would be equally true as far as arranging your work, there may be some jobs where you can't set the tile the same day but there are jobs where you can set [489] it the same day and arrange your work so that you can do it, aren't there? A. Yes, there's jobs where you can put tile over a wet mortar. You could do it every day.

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[491] Q. Well, let's take an average day, as I say, about seventy, seventy-five degrees, normal humidity. You are doing bathrooms in an office building. I am trying to find out approximately how many hours would it take for that wall to cure, as you put it, so that you could start setting tile? [492] A. In a conventional method I can't give you no definite answer, but as a general rule we float on a room or a wall until noon or a little after, and then where we started in the morning we go back to that area—

Q. And start setting your tile? A. —and start setting our tile, providing, as I say, it has cured enough to receive it.

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[494] Q. Well, I am using the example that you gave me, that this is what you would normally do, float out in the morning, put the tile on in the afternoon. In your example the tile would not normally fall off the wall, would it? A. That's right.

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[497] Q. Thank you.

Now, you told us, I believe, that in the 1917 agreement back on page 32 that the plasterer must scratch his brown coat but there are no restrictions whatsoever on the tile layer as to when or how or in what manner he puts on the setting bed, isn't that what you said? A. I believe so.

Q. Now, why did you say that this agreement requires the plasterer to always scratch his brown or plumb coat? A. Well, it says right here, if I am allowed to read—

Q. You certainly are. A. —they shall plumb, rod, square all walls and scratch the same so as to guarantee adhesion to the final coat which shall be put on by the tile layer to act as a bed for his tile.

Q. In other words, because it's listed there you say it must be done every time, is that your position? A. If it's not done we don't properly get a bond between the two.

Q. Supposing you had a situation where the tile layer did not want the brown coat scratched because he was going to use [498] L.&M. to put his tile up. Are you saying that he would have to, the plasterer would have to scratch the brown coat? A. Not if he is going to receive tile on it.

Q. You mean if they are going to use L.&M.? A. If you are going to put tile on a coat that they float and use a bonding agent to stick the tile to it, we definitely cannot have it scratched.

Q. So you wouldn't want it scratched in that situation? A. Not where we are going to put tile on it.

Q. All right.

So then he doesn't have to scratch every brown or plumb coat he puts up, does he? A. I guess he does not.

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Q. Let's take an example. Supposing there was concrete block on that wall, and you are going to put tile over it with L.&M. concentrate or, you know, you are going to mix your concentrate and your Portland cement mortar, or you are going to use it pre-mixed. What would be the setting bed over there? A. The setting bed, there wouldn't be any setting bed. The brick, itself, is the setting bed.

Q. The brick, itself. Do the tile layers claim the brick? A. No, sir.

[499] Q. Or if it was concrete block they wouldn't claim that either, would they? A. No, sir.

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[501] Well, then that is who I am referring to, the Martini Tile Company. If the plasterers had put the float coat on the Rainbo Bakery job you would still be responsible for your work, the tile work, the work you did, generally for a year, isn't that correct? A. Mr. Martini would be, yes, sir.

Q. Right.

And if you would put the tile directly over the concrete block wall, if you could have in that situation, you would [502] still have been responsible for the tile work that Martini did, right? A. That's right.

Q. You wouldn't claim responsibility for whether the bricklayers had put up the concrete wall properly, would you? A. No. sir.

Q. Now, if Martini had gone into or started to go into brick work and if his own forces put up the concrete brick wall, then Martini would probably have to guarantee the brick wall, too, wouldn't he? A. I guess so, if he was in that business.

Q. In other words, he is only going to guarantee whatever he does, correct? A. That's right.

Q. You said you had some equipment along the walls there that you had to work— A. Yes, sir.

Q. —in between or something? A. Conveyors.

Q. Conveyors.

Were they actually attached to the wall or— A. They were right against the wall.

Q. Right against the wall.

So what did you do, run your tile up to them and then start on top of them, or something? [503] A. Yes, sir.

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[504] Q. Now, isn't it a fact that when you generally get in a room you have, say a bathroom in an office building, you have certain dimensions that you must meet, right? A. From corner to corner on a straight wall the dimensions are approximate.

Q. Well, isn't it true that you will have things like plumbing fixtures, shower heads, faucets, that you have to meet them, you can't put two inches of mortar on the wall and cover up the plumbing fixtures or come out beyond the pipe or the plumbing fixtures. A. No, sir.

Q. So you have to hold back enough so that they have the right extension beyond your tile, right? A. On most plumbing fixtures you have a certain amount of tolerance, and if you lay your tile out you can build your wall out a little more or a little less to make it work better with the tile.

Q. But you just can't disregard all these other crafts in the room and lay out your tile to get it the way you want [505] it, can you? A. No, sir.

Q. Supposing you have got a wall, a four-inch wall with a six-inch door buck, and you are going to put tile on both sides of the wall. You know what I mean by door buck, don't you? A. Yes, sir.

Q. A door frame, right? That only leaves you one inch on either side of the door, doesn't it, either side of the wall, doesn't it? A. Four-inch partition?

Q. Yes. A. Yes.

Q. So you can't put on an inch and a half of mortar just because you want to build out your wall to make your tile fit better, you have to put your mortar out on your wall so you would come no more than flush with the door buck, generally, correct? A. That's right, if you have got one inch you couldn't put no more than five-eighths of mortar on the wall.

Q. All right. Fine.

You have to meet the door buck, right? A. Of course, this governs, too, according to the thickness of the tile you are using.

Q. That's right. And generally the door bucks will be [506] installed before you start putting your tile up, won't they? A. Yes, sir.

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[507] Q. Now, when you were foreman on jobs for Martini isn't it a fact that the plastering foreman, if he were putting up the back-up for the tile, would confer with you on how you wanted your work, how you wanted the back-up installed, what type of tile you were going to use? A. No, sir, because most cases it's already up.

Q. So you are telling me that you have never had a plastering foreman on the job confer with you whether you had any special requirements for the back-up to the tile? A. I have had talks with plastering foremen as to the requirements of what we had to have, yes, sir, but most of their work is already done when we come on the job.

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[514] Do you know of any jobs in town right now where tile is being applied directly to block walls? A. Myself, no, sir.

Q. You don't.

Have you applied it directly to block walls? A. Yes, sir.

Q. Do you find your architects are calling for that more and more? A. It's being done quite often, yes, sir.

Q. Would you agree with me that it's a fair statement that since 1957 the dry-set mortars, thin-set method, thin-set materials, have allowed tile contractors and architects to use [515] tile in areas where previous to that time tile may not have been used because of its cost? A. I believe that there's lots of cases they put tile where ordinarily they wouldn't have.

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Q. Do the helpers actually install the tiles? A. No, sir.

Q. I mean, put the tiles on the wall. A. No, sir.

Q. Why don't you let the helpers put the tile on the wall? A. Because that is our job, that is what we are getting paid for.

[516] Q. Well, can they do it? A. I don't believe they could properly.

Q. Why not? A. Satisfactorily. They don't have the skill.

Q. What skill is there is putting the tile on the wall? A. Well, I don't know, I served three years learning how to do it.

Q. I am talking about the actual putting the tile on the wall now. A. It's skill in leveling up your base coat and running your joints square and straight.

Q. You mean the joints of the tile? A. Yes, sir. See that the surface of the tile is smooth.

Q. What else? A. Just anything that pertains to tile work, giving a satisfactory job for the owner or the people that's paying for it.

Q. So then the whole art of it isn't just in the float coat, is it? A. The float coat is the most important step in tile work.

Q. When you are putting— A. It's the foundation for it.

Q. When you are putting tile on that sheetrock wall you have to keep the joints of your tile nice and straight

and your base nice and straight, don't you? [517] A. We try our best.

Q. Well, there is no— A. We have to follow whatever is there.

Q. Of course, but as far as the joints of your tile you certainly try to keep those straight, don't you, just like you would if you would put on the float coat? A. We do our best.

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[527] Miss Thacker: I am trying to ask where the float coat or setting bed exists.

Hearing Officer: That is a good question.

Q. (By Miss Thacker) We have established that it exists in the conventional method, have we not?

Mr. Capuano: Well—

A. Yes.

Q. (By Miss Thacker) All right. The coat of mortar that is put in in the one coat float coat method is a setting bed or a float coat, is it not? A. Yes.

Q. All right.

In the thin-set method, the tile setter applies the bonding agent and the tile. Can it be construed as a float coat or setting bed? A. Not in our line of work. The thin-set material we use is strictly a bonding agent.

[528] Q. A bonding agent? A. And cannot be used as to float a wall or anything in that manner.

Q. All right.

Now, I want to ask you about the Rainbo job. Hasn't there been considerable work done on that job? A. We have been working on that job for years.

Q. So that it is a, this particular job that you did on March 17 on which the picket went up was a part of a continuing job, is that correct? A. I believe that Rainbo Bakery had already bought the tile for that particular area that had gone up.

Q. So was this a repair job? A. No. When I say no as to a repair job, it could be in a sense maybe a repair job because they took out outside windows, they bricked these windows, they plastered them on the outside and

tiled them on the inside. Now, you could say that was repair work. As far as the bakery is concerned I presume that it's repairing and so on.

Q. Would you consider it an alteration job, then? A. I would consider it alteration on the part of the bakery, yes.

Q. Is it usual in that type of work to have the same sort of specifications that you have on a new job? A. No, because on that particular job we are working under [529] the direction of the Rainbo Bakery, like I told my men and I have been instructed, to do whatever they want you to do.

Q. You mean as a part of a continuing agreement? A. That's right. If they want, they decide they want tile on this other wall, put tile on that other wall. If they want to add onto this floor, put it wherever they want it.

Q. Now, then, one other question I want to ask you about the float coat or setting bed. What is the normal thickness of it? A. It will vary from—it depends on what is behind it, but the normal thickness, I would say, would be from a half to five-eighths of an inch.

Q. And isn't it also true that there may be a variation throughout the surface, that it will not be all five-eighths or all three-eighths? A. Some of it may be an eighth of an inch clear up to three-quarters of an inch. It always depends on what you are working over, how straight the surface is behind what you are working over.

Q. What is the normal thickness fo the bonding agent when applied? A. Anything up to an eighth of an inch. That, too, depends on the sizes of tile. The smaller tile you use the less thickness you use. The larger tile you use, you put it on up [530] to an eighth of an inch thick to insure a better bond.

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[544] Recross Examination

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[545] Q. Now, when you use various materials do you follow the manufacturer's recommended instructions how

to use it? A. I do to the best of my ability and know-how. Also I follow the architect's specifications.

Q. Would you look at T-4, please, going to the 1917 [546] agreement?

On redirect yesterday you said that the 1917 agreement doesn't tell the tile layers how thick his setting bed should be or must be. Is that correct? A. I can't see in here where it says, specifically how thick it's to be.

Q. So that means it could be as thin or as thick as you wanted it, then. A. I gather that.

Q. You could have it as thin as an eighth of an inch, then, couldn't you, under the agreement? A. Yes, sir.

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[547] Q. And you didn't know you had to go all the way up to the ceiling? A. I knew we had to go, but I also knew we didn't have the tile to go all the way.

Q. Well, that was just what I asked you. You knew you were going to later put tile on it— A. Right.

Q. —but you didn't have it there to do it immediately, is that right? A. I believe that's right, yes, sir. I think I answered that one question.

Q. Now, when you say float out a wall what does the word float mean? I am not talking about a coat. I mean when you use it as a verb and you say "I floated out the wall," what do you mean by float? A. Applying the Portland cement that it takes to straighten and plumb a wall.

Q. Well, you mean putting the mortar on the wall, right? A. Right.

Q. Spreading it on the wall? A. Right.

Q. That is what you mean by float, right? A. Right.

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[548] Q. Yes, I would say that is what I am talking about.

Now, when you testified yesterday on redirect you were asked a question about one float coat being your setting bed. Do you consider that the job you did was something

called a one float coat out here, the one float coat method out here at Rainbo Bakery? A. Yes, sir, it was, it was applied with one coat.

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[549] Q. All right.

Now, when you spread your L.&M. on this dry mortar bed, this wall at the Rainbo Bakery, you are supposed to cover the L.&M. before it gets a film over it; isn't that correct? A. That's right. Otherwise you get no bond.

Q. Otherwise you get no bond? A. Right.

Q. So wouldn't you agree with me, then, that you have to only put on as much L.&M. as you think you can cover before it gets the film, correct? A. That's right, yes, sir.

Q. Now, when you start a job, say a ten-story office building, you can know before you go on the job whether you are going to send your men in, put the mortar coat on the wall throughout the building or as much of the building as is completed, [550] and then come back and start your tile later, can't you? A. Yes, sir.

Q. Do you ever do that, float out two or three floors and then come back and start laying tile? A. Yes, sir, maybe not two or three floors, maybe one floor.

Q. As much as you can get done? A. That's right.

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Redirect Examination

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[551] Q. No difference. Now, how thick is your setting bed normally? A. A setting bed normally depends on the size and type of tile that you are using.

Q. What would be the minimum? A. Approximately a half inch for a setting bed or a float coat.

Q. Could it be an eighth of an inch? A. It could be. In some places it is. It depends on the trueness of the wall, the surface, that you are installing it on. The wall may be out of plumb a half an inch. You have [552] got to skim it tight in the bottom, plumb it out at top.

Well, naturally if you are tight there you have more up there.

ADOLPH N. MARTINI

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

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[553] Q. Are you a member of the Tile, Terrazzo and Marble Contractors of Houston? A. Yes.

Q. Are you a member of the Tile Contractors Association of America, Incorporated? A. Yes.

Q. Are you bound by the National Joint Board in your contract with the general contractor in any of your agreements? A. No.

Q. Are you bound by the National Joint Board in your association with the Tile Contractors of America? A. No.

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[554] Q. Do you have a collective bargaining agreement with the B.M.&P.I.U., Local 20 and Local 108, the Helpers? A. Yes.

Miss Thacker: Would you mark this for identification, please?

(The document above-referred to was marked Texas State's Exhibit No. 13 for identification.)

Mr. Capuano: What is this, T-13?

Hearing Officer: Right.

Q. (By Miss Thacker) What is this, Mr. Martini? A. That is the agreement by and between the Tile, Terrazzo and Marble Contractors of Houston, Texas, and the Bricklayers, Masons and Plasterers International Union

of America, Local Union 20 of Houston, Texas, representing tile setters, terrazzo workers and marble setters.

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[556] Q. What per cent of your total work is done where you install the mortar setting bed using tile setters? A. Oh, I would say possibly around thirty per cent.

Q. Then in case the tile setters should lose the float coat would you lose thirty per cent of your business? A. Yes, I would say so.

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[563] Q. (By Miss Thacker) Now, Mr. Martini, are you familiar with the setting bed or the float coat to receive tile? A. Yes.

Q. How thick is the setting bed or float coat, generally? A. Oh, it's on an average of a half inch thick. It can be more or less.

Q. How thick—well, let's see, you are familiar with the bonding agents which are applied to the float coat or setting bed for the tile laying. A. Yes.

Q. How thick is the bonding agent, generally? A. It's generally about an eighth of an inch.

Q. Has the introduction of the bonding agents brought about technological changes in tile setting? A. Oh, yes.

Q. What are some of these? A. Well, it's enabled us to install tile in areas that we didn't install it before, such as on sheetrock and diferent [564] materials of that sort, concrete blocks, that we can apply direct to the block or the sheetrock.

Q. Has it had any significant change in the process of tile laying, itself? A. Well, I will say it has in this manner, that when you work against a sheetrock wall or a concrete block wall, or wall prepared by others, you have to work to the surfaces that they give you to work on, and sometimes these surfaces are not always accurate, true, plumb or straight, but if it's generally accepted by the owner or architect, we call their attention

to it, they will permit us to put our material upon those walls by the thin-set method, and we always try to clear it with them first so we won't have to tear it out.

Q. Now, have you ever employed lathers or plasterers and had them on your payroll? A. Yes, we have on occasion.

Q. Have you ever had a plasterer to put in your float coat or setting bed without direct supervision of a tile setter? A. No, I haven't.

Q. Have you seen plasterers work on installing the coat of plaster which is specified to be their work under the 1917 agreement? A. Let's see, I believe under the 1917 agreement it calls for a scratch and brown coat and we have installed out work over their scratch and brown in the conventional method.

[565] Q. Have you watched plasterers actually work at their craft? A. Oh, yes.

Q. Frequently? A. Well, of course, when I was working on the job I used to see them quite often, I was with them every day, practically.

Q. In your opinion do they have the requisite, by they I mean the plasterers, have the requisite skills to install a setting bed or float coat? A. Very few of them do.

Q. Could you guarantee your work as a tile contractor if the plasterer puts in the setting bed or float coat? A. No, I wouldn't, unless that float coat is absolutely perfect.

Q. Now, if you were forced to hire plasterers to put in your float coat or setting bed would it have any effect on your contract with the tile setters and tile helpers? A. Yes, it would.

Q. What effect would that be? A. Well, it would be contrary to our agreement.

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[567] Q. Now, are there any particular advantages in the one coat float coat method over the conventional method? A. Well, your one coat float coat method is actually the same as your conventional method when you

take the, when you start from the surface out, whether it's a scratch and brown coat behind it or remodeling job. Actually the one float coat method is more practical on remodeling work.

Q. Is it cheaper? A. Yes.

Q. Why? A. Because you can cover more ground with a one coat where you can float our setting bed out, like one day, and install the tile the next day.

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[568] Q. What is T-14? A. T-14 is the Plasterers Local No. 79, that is the agreement between the Contractors Lathing and Plastering Association of Houston, Texas and O.P.C.M.I.A. of Houston, Texas, Local No. 79.

Q. What is the rate of the plasterer foreman, hourly rate, effective July 1, '66? A. It will be $4.77 one-half.

Q. What is the hourly rate of the plasterer journeyman from July 1, '66? A. $4.52 one-half.

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[571] Q. Do you have a preference of work assignment to any one craft for the installation of the float coat or setting bed? A. Yes.

Q. Could you give me some reasons, please? A. Well, I prefer tile setters to do it because it's their work. I mean, they are more qualified and have been trained to do that specific type of work.

Q. Do you consider, in your opinion, is their skill superior to any other craft? A. Yes, in installing their own work, I say yes, in tile work.

Q. Would it make any difference to you economically if there are more than one craft on a job installation? A. Oh, it definitely would.

Q. Do you have or would you have better control of the [572] quality of the work over a craft with whom you have a collective bargaining agreement than one with whom you do not have? A. Yes.

Q. Would you tell us exactly what the job was that you did at Rainbo Baking which was picketed by Plasterers

Local 79? A. Yes, that is a remodel job and Rainbo Baking people elected to install some tile wainscot on their walls, I mean, tile walls in their baking room there. And we had to take, we had to install our work on some painted brick out there that was in place, and rather than to chop the paint off we elected to put metal lath on the brick work and nail it up there with concrete nails and install our setting bed and then install our tile on that with a bond coat.

Q. Now, are you familiar with various advertisements for manufacturers of bonding agents? A. Yes.

Q. In these advertisements they sometimes refer to their product as a "bed". In the tile industry can the application of the bonding agent in any way be considered a setting bed as you have thought of it historically or traditionally? A. Well, I wouldn't consider it a setting bed. Now, some of the manufacturers do call it a setting bed. That is just their terminology in their advertisements. I can't speak for them, as I would consider it strictly a bond coat.

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[575] Cross Examination

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[579] Q. (By Mr. Capuano) Now, Mr. Martini, you say you have been in business since 1934? A. That's right.

Q. And you were a tile setter for how long prior to that? A. Let's see, '24, I served three years apprenticeship, so about seven years as a tile setter.

Q. Seven years as a tile setter going back to 1927? A. '27, I think, is when I got my card because I started working in the business in 1924.

Q. O.K. [580] A. And I worked as a helper and then an apprentice, worked my way up.

Q. All right, sir.

So you have got approximately forty years in the business, then, haven't you? A. That's right.

Q. Now, you said you were a member of the Texas Terrazzo and Tile Contractors of Houston. Is that the name of it or is it the Tile and Terrazzo Contractors? What is the name? A. No, it's the Houston Tile, Terrazzo and Marble Contractors Association.

Q. Houston Tile, Terrazzo and Marble Contractors Association. Of Houston? A. Yes, sir.

Q. O.K.

Now, what other associations do you belong to? A. Oh, I belong to the Texas Tile Contractors Association.

Q. What is the exact name of that, now? A. Texas Ceramic Tile Contractors Association.

Q. All right. A. And the Texas Terrazzo Association.

Q. Texas Terrazzo. A. And the National Tile Contractors Association of America.

Q. Is that called the Tile Contractors of America, is that— [581] A. Incorporated.

Q. Is it called National Tile Contractors or just Tile Contractors of America? A. No, it's called the National Tile Contractors Association of America.

Q. I think it's called Tile Contractors of America, Tile Contractors Association, isn't it? A. Yes, I am sorry, I am in error there, it's Tile Contractors Association of America. I knew it was a national organization. I don't know what made me put that in there.

Q. O.K. Any others that you belong to?

All right. A. Well, if you want other trade associations, I am a member of the Producers Council.

Q. No. A. And the C.S.I.

Q. That's right, I think you have given me enough. A. That is all that I can think of.

Q. Now, do you hold any office in the Houston Tile, Terrazzo and Marble Contractors? A. Yes, sir, I am president.

Q. You are president? A. Yes, sir.

Q. And when did you become president? A. Oh, I have been president for over ten years.

[582] Q. For over ten years.

And, let's see, did you hold any office prior to being president? A. No, that is when we formed, I think.

Q. How about this Texas Ceramic Tile Contractors Association, do you hold any office in that? A. Yes, I am vice president.

Q. Prior to that did you hold any office? Oh, let me ask you this first. How long have you been vice president? A. I have been vice president for two years. This is going on the second year now.

Q. Two years.

How about did you hold any office before vice president? A. No, I have been on the Board of Directors.

Q. What is the Board of Directors? A. We are still speaking of the Texas Ceramic Tile?

Q. Yes. What is that? A. You mean you don't know—

Q. I mean what do they do, do they set policy or something? A. You don't know what the Board of Directors is?

Q. Well, would you tell me— A. Yes, for the information, the Board of Directors do set the policies. They are elected by the membership to set policies and determine various questions that come up without going to the membership first, and they bring it up [583] later to be determined by them, to be approved or disapproved.

Q. Pardon me? A. I say they bring these things up, recommendations to the membership later to be approved or disapproved.

Q. And when were you on the Board of Directors? A. Oh, I have been on it, I have been on it a couple of times. I don't remember just exactly what year. It's been within the last five years.

Q. I want to become acquainted with you, you see. I am trying to get your background here. A. Fine.

Q. Do you know if Texas State Tile and Marble Company is a member of these two associations, too, the Houston and the state? A. Yes, sir.

Q. What does that state association take in, the whole State of Texas, is that the idea, of tile contractors? A. That's right.

Q. Now, how about the Tile Contractors Association of America? A. Well, that is a national organization.

Q. Right, made up of tile contractors? A. Of tile contractors from all over the country.

Q. And do you hold any office in that? A. Not at present.

[584] Q. You have held one in the past or some in the past? A. Yes, I have been on the Board of Directors.

Q. When was that? A. Oh, let's see, about two years ago I got off of the Board, so that was in '57. I would say around in '56.

Q. '56? Did you say '56? A. I am sorry, '66. However, I was on in '56 also. I have been on the Board several times.

Q. Oh, you have? When was the first time, '56? A. Oh, it was back in the '50s. I don't remember the exact date. But just recently, it was two years ago, that I got off the Board. That is when my term expired.

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[588] Q. (By Mr. Capuano) Now, you testified that thirty per cent of your work is installing tile in a mortar setting bed, is that right? [589] A. That's right, around thirty per cent.

Q. And you said that if the tile setters lost this work you would lose thirty per cent of your business? A. Well, we would lose all of it, of that particular, we would lose that thirty per cent.

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[594] Q. Now, you say these bonding agents first started coming out in 19, the early 1950's? A. I would say the early '50s.

Q. Yes. All right. A. Let's put it that way.

Q. Now, you gave us two advantages of having these bonding agents. Can you think of any more? You said

you could install it over block or sheetrock. A. Well, it gives us our, it gives our tile setter more working time, I mean, where the material doesn't set up as fast as when we just used to use the Portland cement, and sometimes Portland cement—

Q. You mean as a setting bed? A. No, as a bonding agent. See, the Portland cement used [595] to dry up on you real fast at different times, depending on the wall behind it, the suction, and temperature, in the areas that you work in. If you have a lot of wind blowing over the surface it dries out too fast. Where your thin-set bonding agents will give you more time where you can work your tile much better. It gives you, just gives you a greater flexibility.

Q. All right.

Wouldn't one of the advantages be that you do not have to soak your tile? A. Well, yes, it is an advantage that you don't have to soak the tile.

Q. You used to soak your tile in the conventional method? A. That's right, that's right.

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[600] Q. O.K. That is what I am looking for.

Now, I show you Exhibit T-6, the specifications on the Anderson Library. Now, I know this isn't your job. A. Yeah, that's right.

Q. Look at page 15-2 under 15-6, laying tile, sub-paragraph (a).

Wait a minute. Yes, sub-paragraph (a).

Read that to yourself. A. (Witness complied.)

All right, sir.

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[602] Q. That's right, you reinforced yours with lath.

Now, would you say under this specification that it would permit letting the tile sit for several days and coming back and applying it later with L.&M. or some other material? A. No, not the way this specification reads.

Q. Because it provides that the area must be covered with tile before the mortar has reached its initial set, doesn't it? A. That's right.

Q. That would be a typical conventional installation, wouldn't it? A. No, I couldn't agree with you on that point because the typical conventional method you can cover it or not cover it the same day. That is the way we always do our work.

Q. That is the way you have always done your work? A. Yes, sir.

Q. Are you saying that perhaps if you got a little area left over you would come back in the morning to finish it? A. That's right.

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[606] Q. Now, when you were installing tile back in the '30s and '40s in the conventional method, you would not put a setting bed over a whole lot like the wall in the Rainbo Bakery, knowing that you did not have the tile, and you didn't have any idea when you were going to get it, would you? A. No. We could and we have done it where we were required to by conditions on the job. We had to get in there with our mortar coats and get out of there so we wouldn't interfere with the operations of bread-making there, and they wanted us to get through with our Portland cement mortar, get it out of the building. They didn't want to be bothered with dust and dirt.

And even in years past I have done that same thing that I am telling you I am doing right now, that I have covered up what we put with the conventional method and then come back later and finished our walls above and buttered our tile up, skim-coated that wall and done it many a time.

[607] Q. All right. I don't want to keep on this. Are you telling me that that was a typical installation for you, a typical installation, one you did every day of the

week as a tile contractor? A. Well, no, back in the old days I don't say it was a typical installation.

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[608] Q. (By Mr. Capuano) Mr. Martini, I show you Plasterers' Exhibit 14 and ask you if you can identify that. A. Yes, sir, that is the installation manual of the L.&M. system.

Q. And on this job I believe Mr. Colvin testified you used the L.&M. concentrate. A. That's right.

Q. And that is the dry mixture that you pour into your Portland cement. A. That's right.

Q. And much of this concentrate would you use to a bag of Portland cement? A. I think you use one bag, one box of concentrate to one bag of cement, normally.

Q. And your bag of cement is what, ninety-four pounds? A. Ninety-four pounds, yes, sir.

Q. And your bag or box of concentrate would be how many pounds? A. Oh, I don't remember the exact weight. It would be around twenty to twenty-five pounds.

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[609] Q. Now, you could add sand to that, couldn't you? A. You could.

Q. If you want to make it a little thicker? A. Well, it depends on the way you use it if it's necessary to add sand to it.

Q. But you could. A. Oh, yes, yes.

Q. Have you ever added sand to it? A. Sometimes.

Q. Does L.&M. make a mixture that already has sand in it, too? A. Yes.

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[612] Q. In fact, that is the association that developed thin-set mortars, isn't it? A. Well, let's put it this way, they took it up after Bill Love and Charlie Montgomery.

Q. Oh, Bill Love and Charlie Montgomery were really the first to— A. Well, they were the inventors of it.

Q. They were the inventors of it? A. That is where the L.&M. comes from.

Q. That's right. And then the Tile Council of America picked it up? A. That's right.

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[613] Q. (By Mr. Capuano) I am going to show you Plasterers' 15 and ask you if you can identify that? A. Yes, it's the Highlights of Tile Technical Progress.

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[617] Mr. Capuano: On page, sorry, page six. Just below the section or in the section where it says Still More Advantages. I am asking him to read the last sentence.

Q. (By Mr. Capuano) Would you read that out loud, please? A. It says "Dry-set can cut the weight of the tile bed to one-eighth of a conventional installation, and a job that might take nine days by the old method can be done in two days."

Q. All right.

Now, when they are referring there to the tile bed in the conventional installation, what coat of mortar were they talking about or are they talking about? [618] A. Well, they are talking about the L.&M. bond coat there.

Q. When they are talking about the tile bed— A. When they say dry-set that is what it means there.

Q. Dry-set means L.&M. in that material can cut the weight of a tile bed to one-eighth of a conventional installation.

Now, aren't they stating there that a bed of L.&M., or call it, if you want, a bonding agent, weighs approximately one-eighth of putting on a regular half-inch, up to three-quarter inch, tile setting bed in the conventional method. A. No, it weighs less. There is no doubt about that.

Q. Isn't that what they are saying? A. Yes, it's got to weigh less. An eighth of an inch of mortar can't weigh as much as a half inch of mortar.

Q. And they are comparing it to a regular bed in the conventional method, aren't they, the dry-set mortars as

compared to the conventional bed? A. Well, the way this reads, evidently that is the way they are comparing it, but I still can't agree with them.

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Q. Now, Mr. Martini, maybe I can refresh your recollection a little bit. Weren't you on the Board of Directors of the Texas Ceramic Tile Contractors Association in 1961 and '62? A. I don't remember the exact year, to be honest. There [619] have been several years since I have been.

Q. It was around that time, wasn't it? A. Well, it could have been in the late '50s.

Q. You say you have been on it several times? A. Oh, I have been on it a couple of times, yes.

Q. So one of the times could have been around 1961 or '62, couldn't it? A. Well, possibly. I don't know. Without checking, I couldn't answer your question.

Q. And you would be the representative for the southeastern area of the State of Texas, wouldn't you? A. That's right.

Q. Do you know Mr. Bill B. McHarg? A. Oh, yes.

Q. Who is he? A. He is a tile and marble contractor in Fort Worth, Texas.

Q. Has he ever held any position in the Texas Ceramic Tile Contractors Association? A. Yes, he was president at one time.

Q. Who is president now? A. Mr. Sam Villa, V-i-l-l-a, from San Antonio.

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[620] Q. (By Mr. Capuano) Who was president before Mr. McHarg? Does Mr. Bernard ring a bell? A. Yeah, George Bernard.

Q. Right.

Now, Mr. Montgomery is a tile contractor, isn't he? A. Yes.

Q. Charlie Montgomery? A. Yes.

Q. Where is he, in Waco? A. Waco.

Q. What is it, United Tile? A. Yes.

[621] What does Mr. Love do, is he a contractor? A. No, Mr. Love is with L.&M.

Q. He is running L.&M. and Mr. Montgomery is a tile contractor. A. That's right.

Q. Do you know if Mr. Montgomery is a member of the Texas Ceramic Tile Contractors Association? A. He was at one time. I don't know if he is still a member or not.

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[640] Q. Now, looking at T-7, your specifications for the Rainbo Bakery job— A. Yes, sir.

Q. —is that dated? A. No.

Q. When was it prepared? A. Oh, it was prepared—

Q. That paper in front of you. [641] A. Yes, sir.

Q. When was it prepared? A. Oh, that paper was prepared several weeks ago.

Q. How many weeks ago? A. Oh, I don't know, two or three, I guess.

Q. For this hearing? A. Yes. Those are my specifications.

Q. I understand that. A. Yeah. And that is the way that we have installed it on several other occasions for a period of several years on the job, and all I was doing is clarifying the method of installation there.

Q. You prepared them for this hearing? A. Right.

Q. Now, you said that the tile layers have lower wage rates than the plasterers, they don't have any fringe benefits, the tile helpers don't have any fringe benefits. A. That's right.

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[642] Q. All right. The tile setter rates are lower than the plasterer? A. Than the plasterer mortar mixer.

Q. I am talking about the journeymen now, your journeymen. A. Oh, yes.

Q. Your tile layers are lower than the plasterer journeymen? A. Oh, yes, yes, sir.

Q. And your tile layers don't have any fringe benefits, you said? A. That's right.

Q. So that means that you have got lower wages that you have to pay for their work, isn't it? A. Right, lower than if I had to hire a plasterer.

Q. Right, and you like that, don't you? A. Well, anybody does in business, especially when you have to meet competition like you do today.

Q. So that would influence your opinion on who you would like to see do this work, wouldn't it? A. Wouldn't you?

[643] Q. I will ask the questions. You answer them. Correct? A. No, I wouldn't say it would because I feel that the tile man is more qualified to do it, and if we can do a little bit better job of bargaining than the other man can, that is up to us.

Q. So then just so the Board can understand your testimony, now, the fact that the plasterer has higher wage rates than the tile setter does not enter into your decision as to who you should assign this work to, correct? You are more interested in the skills— A. Well, we are more interested in the skill. Of course, we are interested in cost and in a way it could have a bearing on it.

Q. Well, now, you tell me, does it or doesn't it have a bearing on it? A. If it's going to cost, if it's going to cost me more to do my work with plasterers than it will with tile setters, naturally I am going to take the tile setters.

Q. Right. And you are going to favor the tile setters for that reason, aren't you? A. Certainly.

Q. So that does have a substantial bearing on your opinion as to who you should assign this work to, correct? A. It has some bearing, not all of it.

[644] Q. Well, I want to find out how much. A. Well, I don't know.

Q. Are you saying it doesn't make any difference or it does make a difference, it's a big difference or it's a lot of difference? A. Well, it could make a big difference if

it's a big job. Q. All right. So it is a substantial part of your opinion, right, or it isn't? I mean, tell me. A. Well, it is, yes.

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[645] Q. O.K. Haven't you also testified that Mr. Longshore [646] even asked you to sign an agreement with him, didn't he? A. Sure.

Q. So he was willing to bargain with you, too, wasn't he? A. That's right. You can't blame him for trying.

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[647] Q. You did hear my question, didn't you?

All right, let me ask you another one. If someone else, another craft, another contractor, is going into a room, he is going to put up the walls, whether they be sheetrock, Portland cement mortar, any material, at all, then you are going to come along and put your tile on it with L.&M., Crest or one of these other products, there is nothing unfeasible about that, is there? A. Oh, its being done.

Q. There is nothing unfeasible about it to use your word, is there? You do it? A. Oh, yes, we have done it.

Q. And you do it quite often, don't you? A. On qualifications.

Q. You do it quite often, don't you? A. Oh, yes.

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[658] Recross Examination

Q. (By Mr. Capuano) You said that Mr. McHarg is a member of the Tile Contractors of America and that you have an agreement with him, is that right? The Tile Contractors of America have an agreement with the B.M. P.I.U.? A. That's right.

Q. And you said that that sets forth or stipulates that it's the tile setter's work of putting up the mortar coat? A. Yes, I think it's stipulated in the agreement what the duties of a tile setter are, in the National Agreement.

[659] Q. Yes. How long have the tile setters been entitled to this work under the National Agreement of the Tile Contractors of America? A. Well, it's hard for me to tell. It's been for many, many years.

Q. How long, ten years? A. Oh, I wouldn't guess at that because it would just be strictly a guess and I wouldn't want to do that.

Q. More than ten years? Less than ten years? A. Oh, it's been more than ten years, I know that.

Q. More than ten years.

So at the time these guide specifications were drafted in 1961 the members of the Texas Ceramic Tile Contractors Association should have known that their agreement with the B.M. P.I.U. allegedly assigned some of this work in the specifications to tile layers, shouldn't they? A. Well, I may be able to clarify that for you to some extent. Frankly I am not familiar with this until it came out. I didn't know anything about it. They were having some meetings with the plasterers, the boys up in Dallas and Fort Worth area, of the Texas Ceramic Tile Contractors Association. And all we got was a printed copy of it when it was all over. And frankly I never did approve it personally, and I don't know as it's ever been approved by the National Tile Contractors Association.

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[660] G. ZAMBON

recalled as a witness by and on behalf of the Tile Setters, [661] having been previously sworn, was examined and testified further as follows:

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Direct Examination

Q. (By Miss Thacker) Mr. Zambon, how long have you been in business as a tile contractor? A. As a tile contractor since 1947.

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[662] Q. Are you bound by the National Joint Board in any of your contracts with the general contractor? A. No.

Q. Would you voluntarily bind yourself to the National Joint Board decisions? A. No.

Q. Is there a clause in your local agreement binding you to the National Joint Board? A. Absolutely not.

Q. Is there one in the National Agreement binding you to the Joint Board? A. No.

Q. Do you have a collective bargaining agreement with any other craft than the Tile Setters? A. No.

Q. Of the total work that you do, say in 1966, what per cent of that work did you install the mortar setting bed in which you used tile setters?

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[663] A. I would say in 1966 probably was about forty percent that we float, ourselves.

Q. (By Miss Thacker) So then if the tile setter does not have a right to do that work you would not be doing it either, is that correct? A. That's correct.

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[664] Q. Generally speaking, on the average, what is the thickness of your setting bed or your float coat, though there may be variations, but what does it vary from? A. Well, say it would be around a half inch but sometimes it might be one inch and in some places a quarter of an inch.

Q. Could it be an eighth or three sixteenths? A. Not solid through. In some areas just to straighten the walls out it might be that, you might be able to put one-eighth.

Q. Since you have been in the business and before, when you worked as a tile setter, has there been any change in the setting bed or the float coat, itself? A. Absolutely none.

Q. Where are the technological changes, then? A. The technological changes, the only thing I see the difference, before we were smearing the cement, the pure cement,

on our float coat, and now we have this new matter that is a retarder, it's called thin-set method, which you smear to give you more time to set your tile, and you don't have to soak it, you can also set it while it's dry.

Mr. Capuana: While it what?

The Witness: While the wall is dry.

Q. (By Miss Thacker) So that you know of no changes in the setting bed, itself. [665] A. None.

Q. There are advertisements put out by manufacturers for bonding agents that refer to their product as a "bed". Do you feel it can be called a setting bed in any way, this bonding agent? A. Absolutely not because when we put tile in the conventional way we put cement on the wall, too. What do you call that? Another coat there to bond our tile.

Q. Can you get the same job done on the application of the bonding agent that you do when you apply the float coat to your wall? A. If I—

Q. Can you plumb, rod and square it and do all of the same things that you do to your float coat, can you do that with the bonding agent when you put it on, on the wall? A. No.

Q. Why can't you? A. Well, because on the bonding agent it's just something to bond the material. You follow the contour of the wall or ceiling or whatever it is. You cannot straighten out, you just follow the way it is. But the float coat, that is the one that counts. You put it real straight and then this material you smear on the wall with a notched trowel or whatever you want to smear it with. And you put your tile, you install your tile on it. But it's got to be straight [666] before you put it on unless you can go around in a curve.

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Q. Of the two crafts which craft do you consider to have the superior skill in the application of the float coat, as the tile setter calls it, or a coat of plaster material, as the plasterer calls it? [667] A. If it is for to in-

stall ceramic tile, naturally the tile setter would be a lot more qualified because he is working every day in tile. He knows more precisely how that wall should be floated.

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Q. Now, in the total installation how would you allocate the time as to the floating and of the actual tile setting? A. How long it take me to float compared to setting the tile?

Q. Yes. Yes. A. I would say sixty per cent to do the floating.

Q. Where does the real art of the craft lie? A. The craft lies particularly when you have units, like if you have a door jamb, soffits for swimming pools, and a lot of complicated things which for a man, if he is not continually in the trade, they will be almost impossible for him to do.

Q. Have you had pobs where you have had plasterers on the pob to put on a coat of mortar? Have they been on your payroll? [668] A. I believe I have one time just to help, to fill in, in the Tennessee Gas Building. I don't remember how long. A very short time. That's the only time in my life.

Q. Did they work under direct supervision? A. Yes, sir.

Q. Of a tile setter? A. Just what you call browning or roughing, no finish for our tile.

Q. Oh. You mean they were doing their regular brown coat? A. Yes.

Q. Then they were not doing any work in controversy here? A. No, absolutely not.

Q. Do you have a preference of work assignment to the two crafts? A. Absolutely, yes.

Q. Which one? A. To the tile setters.

Q. Is this solely because you have a collective bargaining agreement with them? A. No, no. As I said before, he has to be trained and it takes many years before he is able to do it.

Q. Does the fact that his, and by his I mean the tile setter, the fact that his rate is lower and he has no fringe benefits, is that a controlling factor? A. Not to me, no. [669] Q. Would you tell us exactly what your job was at the Anderson Library? A. I will be glad to. On the Anderson Library, as a rule, whenever we go on a job if it is for the plasterer to scratch and brown, square and plumb, whatever is to be done, we are happy to see them. If they wanted to do it and it calls like that, it's fine. But on this particular case it was not in my specifications, and I don't remember if it was in the plasterers', where he is supposed to put this brown coat, whatever you call it.

So when we went to the job we apply what we call one coat. The plasterer did scratch the metal lath, and we put our float coat in one time, and we installed the tile later.

Q. Was there— A. We squared and plumbed it and —beg your pardon?

Q. Was there room for another coat for the plasterer to apply? A. In some areas not. Some there probably was.

Q. Then he put in the, the plasterer put in a preliminary rod, squaring and plumbing of the wall, is that correct? A. No, he just scratch over, put the one scratch coat over metal lath, and that is all.

Q. That is all. Did he do a preliminary rod, square and plumb? A. No. He didn't do it because he wasn't called on this [670] particular job.

Q. Now, did you have quarry tile and ceramic tile in this job? A. Yes, ma'am.

Q. Where was the quarry tile? A. The quarry tile were in the stairwells.

Q. That was over metal lath, wasn't it? A. Part were metal lath and part were either structural tile or brick, concrete blocks.

Q. Could you put your tile on the same day that you floated it in that case, quarry tile? A. No, it's too difficult.

Q. Why? A. Well, because quarry tile, they are too heavy.

Q. What would happen? A. It happen if it is in an area you don't have enough thickness, when you start your tile it's got a tendency if you hit too hard, it will loosen the bond, and when it's too soft it will sag, come down.

Q. Fall off the wall? A. Fall off, that's right.

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[671] Q. Now, is it easier to have only one craft on the job or is it just the same if you have more than one on the job? Does it make any difference? A. Well, it makes a lot of difference. It's a lot easier if you have one craft on the job which you can send them in there, install your wall, floors, ceilings, whatever you have, without having two crafts.

Q. Do the plasterers normally have access to the tile and the lay-out of the room that you are going to make at the time that they put up their brown coat? A. No, ma'am, no, they might have access to the specifications, but that don't help them.

Q. Are the specifications that the general contractor has in his office sufficient for the plasterer to know exactly what your tile installation is going to be so that he can make his wall to conform to your specifications? A. Even myself, that I work all my life, I won't know unless I have the tile on the job. I will not be able to give any dimensions whatsoever.

Q. Why isn't it possible? A. Because usually when we are doing a job, we go on a job, [672] ourselves, the plasterer has already, whatever he call it, put the brown coat on it, so when we get there we have to proceed with what we have, whether it's good, bad, or whatever, we just have to follow.

Q. Well, my question is why is that without the tile you cannot lay out the wall properly or float the wall properly? Why is it necessary to have the tile in order

to do that? A. It is necessary because each manufacturer have different size of tile. We are speaking about, say, if it calls, say, four and a quarter by eight and a half, well, it's not four and a quarter, some manufacturers it's four and three sixteenths, four and three-eighths, or over. Same thing in two-by-two tile, it might be two and one-eighth instead of two inches. Well, when you are speaking of when you have a jamb or columns where you come out where it specify in many cases that the union must be full, if you have got in particular one-by-one tile, unless you have start the job, instead of one inch it's one inch and one-sixteenth, you cannot lay the tile unless you have the tile on the job, that is impossible.

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[673] Cross Examination

Q. (By Mr. Capuano) I was interested, Mr. Martini—
Miss Thacker: This is Mr. Zambon.
Mr. Capuano: I am sorry. Mrs. Zambon.

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[675] Q. O.K.

Now, on this Anderson Library you received a copy of the Joint Board award in this case, didn't you? A. Yes.

[676] Q. That was the November 11 one and the— A. I got them all.

Q. You got them all? A. Yes.

Q. So we know what we are talking about, let's just get the exhibit numbers. P-3 and T-8. You got copies of both those? A. Right.

Q. And they referred to the Southwestern Construction Company, contractors, Texas State Tile and Terrazo Company, sub-contractor, and the Science Building as the job. A. Right.

Q. Now, that wasn't the job they were talking about, was it? A. No.

Q. It was the library job, wasn't it? A. Right.

Q. You understood that, didn't you? A. Right.

Q. And you sent a telegram to the Board, in fact, telling them this. A. That's right.

Q. But they kept calling it the Science Building, didn't they? A. Yes.

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[678] Q. Now, I would like to clear up a little bit the actual work that has been done on this job.

Now, let's stick with the bathroom first. What did you have, maybe two bathrooms on each floor? A. Yeah.

Q. And they were sort of large bathrooms, weren't they? A. Correct.

Q And you had ceramic tile, what, glazed ceramic tile in there? A. Four and a quarter on the walls and two-by-two on the floors.

Q. All right.

And out in the stairwells, you had two stairwells? A. Four stairwells.

Q. Four stairwells. O.K. You have quarry tile out there? A. Right.

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[683] Q. No. You put your coat on the wall and you let it dry, right, the mortar coat? A. Yeah.

Q. Then you say the next day you come back and put the tile on? A. Right.

Q. Well, was there ever a lapse logner than one day before you put the tile on the float coat? A. Not in the bathrooms, I don't think so.

Q. Not in the bathrooms. You did that in one day? A. Yeah.

Q. All right.

So then the next day you came back and you used this mixture of Portland cement, water and what else? A. And some concentrate made by Kaiser.

Q. Made by Kaiser. Do you know what it's called? A. It's concentrate, Kaiser is the manufacturer that makes it.

Q. Is it a liquid concentrate or powdered concentrate? A. Powder.

Q. Is it a Crest concentrate? A. That's right, it's Crest.

Q. And is that similar to the L.&M. concentrate we just discussed here? A. Yes, similar.

[684] Q. And did you have to mix about twenty-five pounds of that with each bag of Portland cement? A. Yes.

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[685] Q. Well, all right, twenty percent.

Did you try using just neat cement to put that on the wall, put the tile on the wall? A. Well, using the neat cement it was drying too fast. I was afraid it was not making a good bond. Since this thing come out we found it's a good thing to keep nice and soft so we can put on tile without water. We know it will bond.

Q. The neat cement was drying too fast? A. If you put just neat cement without this retarder of concentrate it will dry up too fast, it won't bond your tile.

Q What is that? A. Why is that?

Q. Yeah, why would it dry too fast? A. Because the wall was too dry.

Q. You mean because it was a day old, you mean? A. Yes. Well, even the same day, where you have got a small amount, it would be too dry.

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[686] Q. Wallboard, gypsum plaster? A. Right.

Q. Have you put any right over concrete block yet, or brick? A. I don't remember. Concrete block, I don't think I go for it, but probably I will if I have to do it.

Q. How about brick? A. No, not on brick.

Q. How about right on a concrete wall, have you ever done that? A. I think we have one job on concrete wall, yes.

Q. One job? A. Yes.

Q. You said you were a member of the Tile Layers, didn't you, the union? A. Yes.

Q. When you install tile right over gypsum plaster do you know if the tile layers claim the installation of the gypsum plaster coat? A. No, if it's gypsum plaster we do not claim it. That is not ours.

Q. They don't claim it? A. No.

Q. And you don't claim the installation of the sheetrock, either? [687] A. No, but we don't guarantee it, either, because I am working now—

Q. Yeah, I understand your guarantee. I understand your guarantee.

When you put it over gypsum plaster, you know, like we just talked about, say not a white coat gypsum plaster, just the brown— A. Just the brown, yes.

Q. —what would be the setting bed there? A. There will be no setting bed.

Q. You wouldn't have any setting bed? A. No. That one there would be considered the setting bed, that one there.

Q. What do you mean that one there? A. Or I might have to put it up with some organic adhesive in there.

Q. You pointed your head, now, and the record didn't get that. What are you talking about? You said that one there might be the setting bed. What do you mean? A. Well, the brown coat as you call it, that one there will be a backing, something to put, it's got to be a surface that we have to put the tile on.

Q. Uh-huh. A. That will be serving as part of the wall, I guess, that one there.

[688] Q. Would you say that would be the setting bed, then, when you put it over gypsum brown coat? A. Well, whether it's bad or good, I call that the setting bed, yes.

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[689] Q. Let me see if I can understand you, then.

If the plasterer put up the mortar coat on the wall of Portland, say in those bathrooms at Anderson Library— let me [690] put it this way first, you said that the mortar coat you put up on the wall was the setting bed,

right, or was the setting bed for your tile? A. That's right.

Q. Now, if the plasterer had that in his contract, he would put up that mortar coat, and you come back the next day and cover it with your Crest concentrate, what would you call the coat that the plasterer put up? A. I would call it just a bonding coat to stick the tile with.

Q. No, what would you—let me ask you this first. If the plasterer put the coat of mortar on the wall, what would be the purpose of that coat? A. The purpose of the coat is to be sure that the walls, when we apply this L.&M. material, thin-set, to be sure that the back is straight because the last part that you put this thin layer of L.&M. or Crest that you put, that one there serves just to bond the tile, but if the wall is not straight, if it goes like this (illustrating), you just follow the contour of the wall.

Q. Please, I wish you would just limit your answers to my questions. The purpose of the coat would be to straighten the wall, right, plumb the wall up? A. Correct.

Q. Now, when you went in there and you put that coat on the [691] wall, the mortar coat in the bathrooms, what was the purpose of the coat of mortar that you put on? A. The purpose is that I think we put it up better than they do, that's right.

Oh, now, please.

Mr. Capuano: Mr. Hearing Officer, I am going to have to ask that he respond to the questions. I keep getting all these voluntary statements about his position.

Q. (By Mr. Capuano) Now, I think my question was very clear to you. What is the purpose of the mortar coat that you put up on the wall in the bathrooms in the Anderson Library? A. The purpose was to receive tile.

Q. Did it have any other purpose? A. No.

Q. It didn't. A. The purpose was to put a nice plumb, straight and square wall, and then to install the tile the

next day with either—with the new methods we have, whether you call it L.&M. or Crest or whatever it was.

Q. All right.

So you plumbed and straightened, squared and rodded the wall with that coat, right? A. That's right.

Q. Now, I was glad to hear your testimony that as far as you are concerned the higher wage rate of the plasterers [692] doesn't enter into your— A. That is not a prime reason, no, not to me.

Q. Would you let me finish my question?

Doesn't enter into your prefeernce between hiring tile setters or plasterers, right? A. If I don't have any preference?

Q. No, wages don't make any difference. A. No.

Q. We can discount wages? A. Right.

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[695] Q. O.K.

Now, if when you were putting tile over sheetrock, your tile setter could put up the studding and sheetrock, make sure you had a nice straight wall, it would be easier for you to put on your tile, wouldn't it, get a good job, right? A. Yes.

Q. It would be nice and straight, wouldn't it? A. Yes.

Q. And then you could guarantee the work that your employees did, right? A. Uh-huh.

Q. But your employees don't put up the walls, do they? A. No, they don't.

Q. In the construction industry you have a lot of crafts doing various parts of a building, don't you? A. Right.

Q. And if we had only one craft it would be a lot simpler, wouldn't it? A. Well, naturally.

Q. There would be no jurisdictional disputes. A. Yes.

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[699] Q. If you put tile in a bathroom where there is a tub, is the tub installed before you get there? A. Yes.

Q. So when you are building your walls on either end of that tub you can't build your walls out so far that your mortar is [700] going to hand over inside the tub, can you? A. No.

Q. You have got to set back to the edge of the tub, right? A. You have got to make it cover the lip of the tub so the water won't leak.

Q. Right.

And you have got a little bit of room there to move but that is all, isn't that true? A. Well, you have got quite a bit. You have got a little play there.

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[702] Q. Are you telling me that you did not talk to the architect or the inspector to change the specifications? A. I did not talk to change it, no.

Q. All right.

But you did not install it in accordance with the specification, right? A. Because it was improper.

Q. I understand your reason. I understand. You just gave us that speech. A. O.K.

Q. But you did not do it according to specifications, right? A. No.

Q. Are you saying no, what I said was wrong, or no, you did not do it? A. No, I said that you are right, when I said no, I didn't do it.

Q. O.K.

Now, you are a member of the Texas Ceramic Tile Association [703] also, aren't you? A. Yes.

Q. And you have held some offices in that group, haven't you? A. Never did.

Q. Never did? A. No.

Q. Never been on the Board of Directors? A. Never did.

Q. Do you have a brother in your firm that has been on the Board of Directors? A. No.

Q. Would it refresh your recollection if I suggested that August of 1961 Mr. G. Zambon was on the Board of Directors from Southeast Texas Zone? A. If I was

they must have elected me without even knowing it because I attended one time that meeting there in San Antonio and never did go any more.

Q. Did you know they were using your name on their letterhead? A. They might, I don't know.

Q. You don't know? A. No, sir.

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[705] Q. (By Mr. Capuano) Just one question. Has the Plasterers Union ever told you they would not work for you? A. No.

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[710] ELZIE GOOD

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Miss Thacker) Mr. Good, are you a tile setter? A. Yes, ma'am.

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[716] Q. Now, Mr. Good, if you are going to do an expert job of tile setting, what is necessary? A. It's necessary to have a plumb and straight wall.

Q. Is the wall plumb and straight when the plasterers get through with it, generally?

Mr. Capuano: Oh, now, I am going to object to that question.

Miss Thacker: Well, now, the plasterers do, according to the agreement, a preliminary plumb. It says so in the agreement. It is preliminary. So I am asking him if they [717] are in effect following the agreement. They are not called on to get it completely.

Q. (By Miss Thacker) Is it preliminary. Is the job, Mr. Good, that the plasterers do in a conventional method or a one float coat method a finished job as to plumb, rodding and squaring? A. No.

Q. Then when you come onto the job in that sort of a tile installation, a conventional job or one float coat method, what do you do then? A. Well, I usually check the job out and get with the plasterer and try to get it patched up where it's wrong.

Q. Well, now, this is my question here, where you are doing a conventional method or a one float coat method that you are putting on the float coat— A. That I—

Q. That you are putting on. He has done a scratch coat and a brown coat. Now you have got the float coat to put on, yourself, and you come onto the job. He has done the brown coat and the scratch coat. Now, what do you do when you come on to put your float coat on? A. Well, I come in and plumb and square all my walls to float.

Q. Do you have the tile that you are going to put up? A. Yes, ma'am.

[718] Q. Is it necessary to have the tile that you are going to put up? A. Yes, ma'am, I believe it is.

Q. Why? A. Well, all the tiles are from different factories or different sizes, and if you are going to float a wall out to receive tile you have to have the tile there to know what size.

Q. Can you always put up tile the same day you float? A. Yes, ma'am.

Q. On a wet wall will quarry tile stay on a wet wall? A. Well, no, ma'am, not on a wet wall it won't.

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[721] Cross Examination

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[730] Now, you told me that, or I believe you told Miss Thacker, in the conventional method you have to know the size of the tile, is that right? A. You need to.

Q. Now, the size of the tile is no secret that only tile setters know, is it? A. No, it's not.

Q. Anybody can take a tile and measure it and know what size it is, that is right, can't they?

You are shaking your head yes? A. Yes.

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[734] BENNIE HAROLD MOORE

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

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[736] Q. Is it your understanding that the plasterers should scratch their coat? A. They should be scratched if we are going to put our float coat on it.

Q. Should it be scratched if you are going to do a thin-set? A. No, ma'am.

Q. Can you put on the bonding agent on a scratched surface? A. Well, I don't do—you can put it on but you can't get a proper job it it's just scratched. I mean, you would have waves.

Q. Do you have any way of controlling the bonding agents in [737] such a fashion that you could straighten up the wall with the bonding agent alone? A. No, ma'am. We are using the thin-set and usually it takes a long time to set, so if we try to straighten a wall up with it, it would roll right off the wall, right down the wall.

Q. In your bonding agent do you generally have different thicknesses, say, on a surface— A. Yes, ma'am.

Q. —would there be some place where it would be a 32nd and some where it might be a 16th. Does your bonding agent vary in thickness on a surface? A. Well, we use different notched trowels to install our bonding agent.

Q. But is there a variation of your bonding agent or is it generally the same thickness in your installation?

A. No, ma'am, it's not. Like I say, we use different notched trowels. We use an eighth-inch notch and then—

Q. So it's pretty uniform, then? A. Yes, we are supposed to put it uniform on the wall, yes, ma'am.

Q. So, then you are saying that you can't correct any inequalities in the surface through your bonding agent alone? A. No, ma'am, you sure can't.

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[738] Q. (By Miss Thacker) Now, Mr. Moore, can you put up successfully quarry tile on a wet setting bed? A. Well, I would think that you could. I mean, if I set it.

Q. On a wet setting bed?

Mr. Capuano: It's repetitive. He answered the question.

A. If, I mean, if your wall isn't too wet were it will slide, you could.

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[739] Q. Now, since you have been tile setting has there been any change in the setting bed, itself? A. No, ma'am, there hasn't other than the thin-set method, but there has actually been no change in your setting bed.

Q. No change in the setting bed? A. No, ma'am.

Q. What effect has the new bonding agents had on tile installation? [740] A. It sticks your tile to your setting bed.

Q. Does it have any other purpose, the bonding agent? A. No, ma'am, that is just about it, a bonding agent.

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Cross Examination

Q. (By Mr. Capuano) Mr. Moore—is that correct? A. Yes, sir.

Q. What did you mean you came in with two vouchers into the tile setters? A. Well, other than going through an apprenticeship, well, I was setting tile, I mean, I

wasn't setting but I was helping an uncle of mine, and I more or less picked up from him how to set tile, and I got two proper vouchers and got in the union.

Q. Was he a union contractor? A. No, sir, he was a union tile setter.

Q. He was a union tile setter? A. Yes, sir.

Q. Well, I don't understand, were you helping him when he was working for a union tile contractor? A. Yes, sir.

Q. Well, were you in the Helpers Union, then? A. Where I was helping them they didn't have a helpers union.

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[744] Q. Now, you have been on other jobs where the plasterer had put on the mortar coat and you have put on the thin-set material, haven't you? A. Yes, sir.

Q. Have you gone to the plastering contractor and demanded that work that the plasterers are doing? A. No, sir, I have never.

Q. Now, have you put any tile over gypsum plaster? A. Yes, sir, I have.

[745] Q. And you use an organic adhesive for that, don't you? A. Well, they have got what they call Wellcrete or Bondcrete that the walls are painted with and then we go over it.

Q. With your organic adhesive, is that right? A. With our thin-set, or either mastic, if we are using a mastic.

Q. Well, do you know, would you put a dry-set Portland cement mortar over gypsum plaster? A. No, sir.

Q. What would you use? You would use some sort of mastic, you say? A. Well, like I say, you paint, if you use Bondcrete or Wellcrete—

Q. You put a waterproofing over it, you mean? A. Yeah.

Q. Then you put some sort of adhesive onto it to put your tile on, right? A. Well, a mastic or thin-set, either one.

Q. Right. A. You can use either one.

Q. Well what is the difference? You say a mastic or a like L. & M. or a premix.

Q. Right. You would normally use the mastic over gypsum. [746] wouldn't you? A. Well, actually it's according to what your boss wants it installed with.

Q. You could use both.

Which is the organic and which is the inorganic of those two? A. Well, your mastic—I don't know, to tell you the truth.

Q. You mentioned Wellcrete? A. Yes, sir.

Q. Isn't Wellcrete a bonding agent? A. Yes, sir, it is. It makes your material that you are putting on to the surface bond to it.

Q. And then do you put something on top of the Wellcrete? A. Yes, sir.

Q. You would put one of these adhesives on top of the Wellcrete, is that what you are saying? A. Yes, whatever you are going to stick it with.

Q. Well, when you are putting it over gypsum plaster what would be your setting bed, then? A. You stick direct.

Q. Direct to what? A. To the plaster.

Q. But would there be a setting bed in that situation? A. Well, it would be just, you would stick direct to what—a setting bed is when we put, or the plasterer puts the last— [747] our float coat is our setting bed.

Q. Well, you mean it's only called a setting bed if you put it in, is that what you are saying? A. No, sir, I mean we can stick direct to the gypsum board or any of that.

Q. Well, what would be the setting bed when you stick right to the gypsum board? A. That board, what it would be set to.

Q. Does the tile setter claim the installation of the wallboard? A. No, sir, we don't.

Q. How about if you put the tile right over concrete block, do you as a tile setter claim the concrete block? A. No, sir.

Q. Now, you were asked a question about some ceramic tile, if you could set it on a wall that is fairly wet, and I think you said, you know; you couldn't set it on that.

If you got a wall, I am talking about Portland cement mortar now, if that is firm could you put the ceramic tile on it then? A. Yes, sir.

Q. If you started, you know, putting up your float coat about 8:00 in the morning—is that about the time you start work? A. Yes, sir.

[748] Q. You know, in a typical bathroom, say in an apartment house or something like that, about when would that mortar start getting firm? A. Well, it's according to the wall that you float.

Q. Sure, I realize that. Say you have got it on concrete block. A. And usually—you mean when would it start getting hard?

Q. Start getting firm so that you could start laying your tile. A. Well, I would give it—usually the way I do it now, this is the way I do it.

Q. Sure, that is what I want. A. I figure that I can, it's over half of our work, you know, browning out, floating, and I can put up what I float that morning with tile.

Q. You mean you would float it in the morning and then go back and start covering it in the afternoon? A. Yes, sir.

Q. Now, when you are going to put this Crest or L. & M. on the wall you don't want the walls scratched, do you? A. I don't want no scratched wall to stick tile to.

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[752] L. D. McHARGUE

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

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[753] Direct Examination

[757] Q. How much time of this apprentice program do they spend learning how to put on the float coat or the setting bed? A. I would say between sixty and sixty-five per cent.

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Hearing Officer: All right.

Would you please explain to us how the apprenticeship program operates?

The Witness: As to how the apprentice—

Hearing Officer: Right, how do you begin and how does it [758] end?

The Witness: Well, a union contractor sends a letter of request in to the local requesting a certain or a person by name, and then it's voted on at the Union and, in other words, we have a certain—our apprentices can't be over a certain percentage of the entire membership.

Hearing Officer: In other words, the contractor is requesting that this individual be admitted to the apprenticeship program, is that what is happening?

The Witness: Yes.

Hearing Officer: O.K.

Go ahead.

The Witness: And if he is accepted by both parties, then he is put on the on-the-job training and he picks the trade up with on-the-job training.

Hearing Officer: What does this on-the-job training consist of?

The Witness: Well, he learns how to prepare mortars, he learns how to lay out the tile work, he learns how to square up a room, plumb up a room, he learns how to use his tools, hawk and trowel, and strings and water levels.

Hearing Officer: How does he learn how to do this?

The Witness: Through the supervision of his mechanic. He is assigned with a mechanic.

Hearing Officer: Well, is the apprentice actually [759] performing these functions—

The Witness: Yes.

Hearing Officer: —or is he in an observation capacity?

The Witness: He is performing, he is helping the mechanic, working right with the mechanic.

Hearing Officer: O.K.

Now, how long does this program take?

The Witness: Three years.

Hearing Officer: Is this a uniform program of three years?

The Witness: Yes, it's a uniform program for three years. Of course, the more advanced he is in the program the more he will be able to do on the job, you know.

Hearing Officer: There's no provisions, for instance, at the end of the two-year period if he appears to be performing satisfactorily then to become a journeyman?

The Witness: Yes, if he can have—if it's agreeable with the contractor and if he can get two vouchers, two mechanics that are members in good standing to vouch for him, them he can break out as a journeyman any time after a certain length of time.

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[773] Q. (By Miss Thacker) Now, Mr. McHargue, have you ever asked any plastering contractor for this work in dispute? A. No.

Q. Why A. Well, we don't have any bargaining agreement with the plastering contractors. If we were —the only way we could get this work would be through the Plasterers' business agent, not through the plastering contractors.

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Q. Now, I want to ask you about some, some questions about the float coat or the setting bed. In tile installation where is the real art of the craft? A. That is the question?

Q. Yes. A. The real art of the craft is in, the whole craft, is in the float coat or setting bed.

[774] Q. Can the bonding agent be considered a—

Hearing Officer: Wait. Before you leave that, as long as we are talking about the art, why do you think it is the float coat that is the real art to a tile setter?

The Witness: Well, the float coat brings it out to your finished dimensions, and it works to the tile that you have in hand to apply to this float coat, and just like the case of three-eighths cuts at the header, a tile setter would, or should have avoided that three-eighths cut. In other words, where you have the material on the job to lay out your work with, you can favor here and there to make the tile work to the best appearance, and the person buying the tile gets the most for his money.

Hearing Officer: And you say the float coat, then, has a direct bearing on the appearance of the tile?

The Witness: The float coat is everything.

Hearing Officer: O.K. Go ahead.

Q. (By Miss Thacker) What is the usual thickness or what is the variation of the thickness of your float coat? A. Well, I would say where the plasterer has scratched ahead of us, I would say it would be anywhere in the neighborhood of a half an inch and it would be fairly uniform, but on a one-coat method or two-coat method where the plasterer has only scratched the lath or filled the lath up, it would vary from a quarter to three-quarters of an inch, possibly an inch, [775] and then on one-coat work explicitly unless we have a real smooth surface, it would vary anywhere from a quarter-inch to an inch and a quarter, inch and a half, depending on how much—

Q. And the reason for the variations, explain the reason for the variations. A. Well, humps in the wall, or a wall may be out of plumb, now, out of square, would be the only reason.

Q. Are you saying, then, that you are straightening the wall by the float coat? A. Yes, you are bringing it out to a finished dimension, straight, square and plumb.

Q. Does the plasterer know what the finished dimensions are going to be when he does his work?

Mr. Capuano: Now, I am going to object. How does he know what the plasterer knows?

Hearing Officer: Well, let's let him—

Miss Thacker: Well what I am asking is does the—

Mr. Capuano: I heard what you were asking.

Miss Thacker: Well, maybe you didn't.

Hearing Officer: Maybe he knows the answer.

Miss Thacker: I will rephrase my question, Mr. Hearing Officer.

Q. (By Miss Thacker) Are the finished dimensions available to the plasterer at the time that he puts on his scratch or [776] brown coat? A. You mean as far as the size of the tile is concerned?

Q. Yes. A. I wouldn't think so. I guess he could possibly get them if he knew just exactly how to go about it, but I don't think the plasterer contractor is going to run this material down, and I don't think the journeyman plaserer is going to have any, enough interest in the finished tile work to run the material down.

Hearing Officer: You can develop this on cross, I believe.

Q. (By Miss Thacker) Now, is the tile usually on the job at the time that the plasterer does his scratch coat or brown coat? A. Not normally.

Q. Now, do you generally float ahead? A. Yes.

Q. Do you generally float ahead? A. In some cases we float ahead and in some cases we turn right around and cover up our work. It all depends on what is more feasible as far as the installation of the work, whichever way we can give the contractor the most for the hours.

Q. Does the size or the type of the tile have anything to do with it? A. Yes.

[777] Q. What? A. Well, if you are working small, say small, three-quarter inch ceramic, you have to have a hard surface to put it on to get everything straight and nice, and if it's heavy tile it's got to be firm or it will

pull itself off the wall or sag, and then you have got conditions where possibly the plasterers use a hot scratch coat and your mud will burn on you and when it gets to a certain stage you have a sandy surface on the float coat and you try to put tile on it, you pull the bonding agent and the tile and all off.

It doesn't bond.

Q. It breaks the bond? A. Yes.

Q. Now, Mr. McHargue, on ceramic work, particularly, what about hanging walls where your float coat is wet, does that have any effect on it? A. You mean on the small, say like three-quarter inch ceramic?

Q. Yes. A. You can't hang ceramic over wet walls. You can put it up there but you can't work it. You get it out of shape if you try to pull the paper off it. You fill the ceramic up with sand to hold the joints when you put it on the wall, and if you work it then it gets itself out of shape.

Q. Now, you have used the term hanging. What do you mean by hanging? [778] A. Putting a neat cement coat on the wall or buttering the back of the tile and putting it on the wall, blocking it in.

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Q. Now, on your ceramic tile do you start at the top or start at the bottom? A. Oh, it all depends on what kind of job it is. We start at the top.

Q. You have a line to work from? A. Yes, we have to start from a line regardless of whether we start from the top or from the bottom, and it has to hang to that line.

Q. All right.

Now, if it's a wet setting bed can you stay to the line then? [779] A. No, you can't.

Q. Why? A. When you work your tile it won't stay with the line. It moves.

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[786] Q. Now, I want to ask you something about the bonding agents. What is the purpose of it? A. What is the purpose of the bonding agent?

Q. Yes. A. To stick tile to the wall with.

Q. Is it purely an adhesive? A. Yes.

Q. Would it be comparable, in your opinion, to the glue used by the paperhanger? A. Yes, it allows you about as much room for corrections.

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[788]

Cross Examination

Q. (By Mr. Capuano) Mr. McHargue, is that correct, McHargue? A. Yes.

[797] Q. Now, you talked about your apprentices, you said you have eleven or twelve. Is your apprentice program registered with the B.A.T.? A. Who is B.A.T.?

Q. Bureau of Apprenticeship Training of the U.S. Labor Department. A. As far as I know we are. They are registered with the [798] International Union in the Stake Conference.

A. The Stake Conference is registered with—

Q. And the International Stake Conference is registered? A. Pardon?

Q. You say the International Conference is registered? A. The Stake Conference is registered with—

Q. I am sorry, the Stake Conference is registered with B.A.T.? A. As far as I know they are.

Q. As far as you know.

Do you have some apprenticeship standards that you go by? A. On-the-job training.

Q. Well, do you have anything written down, any sort of written program for your apprenticeship standards? A. We have it, I am sure, but I am not too familiar with it.

Q. You are the business agent of the local? A. Newly.

Q. The newly elected business agent? A. Yes, newly.

Q. Well, for about seven months, now? A. Well, I have been tied up in other areas for the last seven months.

Q. Is there any set amount of time that a person must act as a helper before he becomes a member of your union? [799] A. An an apprentice?

Q. No, as a helper. A. Now, are you speaking of the Tile Layers Union or the Helpers Union now? Which are you referring to now?

Q. Well, do you have any tile helpers in your union? A. No.

Q. Well, then I am talking about the union that the helpers belong to. A. Now, you are asking me if—

Q. If you will let me clarify it, I don't believe I used the word union, at all. I simply asked you is there any set time after which a helper can become a member of your union or does automatically become a member of the Tile Layers Union? A. No.

Q. Do they ever become members? A. Of our union?

Q. Yes. A. If they want to come in on the apprentice program. They don't automatically from a helper become a journeyman tile layer.

Q. They have got to go through the apprentice program? A. They don't have to, but they have got to learn the tile trade somewhere. They can't come in as a journeyman mechanic, from a helper to a journeyman mechanic.

Q. And they don't learn it as a helper, is that what you are [800] telling me? A. That's right.

Q. Supposing you have someone who has been a helper for a few years and he wants to come in your union, he has got to serve a three-year apprenticeship? A. Well, he has either got to serve an apprenticeship to prove his proficiency or he has to go to work in an open shop somewhere and get the experience because he can't come in as a journeymen, from a helper to a journeyman mechanic.

Q. So if he goes to an open shop and get some experience as what, a tile setter? A. Yes.

Q. It that it? A. That is what I would assume.

Q. Well, now, you are the officer. I am not. So is this what he would have to do? A. Well, yes, I suppose if he wanted to be a tile setter mechanic he would have to have some experience from somewhere. Now, we cover marble and terrazzo, too.

Q. All right.

So you talked a bit about these vouchers, too. Is that what you mean, he would have to get two statements from— A. If he came in as a journeyman mechanic he would have to have two vouchers.

Q. Two vouchers from two of your members? [801] A. Two members, not necessarily my members, but members of the Tile Setters of the B.M.P.I.U.

Q. Who are in good standing? A. Yes, who are in good standing, for three years good standing.

Q. In other words, he has got to get vouchers from two members of the B.M.P.I.U, is that what you said, or two tile setters? A. Yes, or install a job and have an examining committee go over the work.

Q. Well, can these two members, must they be Tile Setter members of B.M.P.I.U. or any members of B.M.P.I.U? A. Well, how could a—

Hearing Officer: He is asking the questions now. Answer the one he asked you.

A. Pardon?

Repeat it.

Q. (By Mr. Capuano) I said must these two members who vouch for this man be Tile Setter members of B.M.P.I.U. or can they be B.M.P.I.U. members who do other work, such as cement masons or brick masonry, or so forth? A. Normally it would be of the same craft.

Q. All right. The same craft.

And they have got to be in good standing for three years before they vouch for this helper who wants to come in? A. That is my understanding.

[802] Q. And by that you mean he has got to have, they have got to have their dues paid up for three years? A. Well—

Q. To be in good standing. A. Yes. Not three years in advance.

Q. No, no, I mean they had to be in good standing for three years past in order to vouch for this man who wants to come in as a journeyman, right? A. I believe that's right.

Q. Well, now, what is the relationship between having your dues paid for three years and being able to vouch for the man's ability to put tile on a wall? A. I am not sure I know.

Q. O.K.

So they come in, then, through this apprentice program, getting two people to vouch for them being able to do the work if they are a helper, or you say they can just come to you and ask you to go and inspect a job they did? A. They have. Not to me, no.

Q. Who do they go to? A. They put it, it's brought to the attention of the Union, and there is a committee that goes out, not any one man. There is a committee.

Q. Well, all right, a committee goes out and looks at it? A. A three-man committee.

[803] Q. So you can do it any one of three ways that you can get into your local union, right? A. Yes.

Q. All right.

Now— A. Except an apprentice still has to be vouched for when he finishes his apprenticeship program.

Q. Oh, you still have to be vouched for? A. Yes, he does.

Q. Can he take a test at the end of it? A. If you have vouchers you don't. And normally a shop that he works in will have vouchers.

Q. All right.

Then you made a comment which I am not sure about. You said an apprentice can become a journeyman after a certain amount of time. And as I understood it you

meant different than the end of a three-year period. A. You mean shorter than a three-year period?

Q. Yes. A. That is possible.

Q. Now, how is that possible? A. Well, if he is proficient enough in the trade that he thinks he can command the wages of a journeyman, and the contractor that he is indentured to feels that he is qualified as a journeyman, well, then we, if he can secure the vouchers, [804] then we can turn him loose as a journeyman.

Q. Now, do you actually see that an apprentice gets instruction in all phases of your work. A. We try our best to.

Q. Well, how do you do that, by sending him out in a shop and having him work with journeymen, is that it? A. Normally.

Q. Well, then it's possible that he could go out and work with a journeyman and only be sticking tile on sheetrock or concrete block, isn't it? A. It's possible, I suppose, if that is all the work that the shop that he was working in had, but it would take him about ten years to make a mechanic this route.

Q. So then he wouldn't get any experience in putting up a mortar coat, would he? A. No, he wouldn't. He would be a thin-set mechanic when he got through.

Q. Right.

So fifty per cent of his time wouldn't be spent floating out walls, would it? A. Well, we are speaking of a three-year program and a man being a mechanic when he finishes.

Q. Yes, but if for three years he isn't spending all this time doing jobs where the tile setters are floating out walls, he is not going to be spending fifty per cent of that three [805] years floating out walls, he is? A. Well, I don't suppose he would, possibly not spend fifty per cent or sixty per cent or seventy per cent.

Q. You don't know how much of it he would spend, do you? A. Well, I would say if he worked on the right type of work he would spend sixty-five to seventy per

cent of his time learning how to float a wall, plumb it up, square it up. And of course, all this pertains to floating.

Q. You are saying that if during the three-year period all the jobs he worked on were the type where the tile setters put the float coat behind the, what I call the setting bed, and you call the bonding agent, then he would spend fifty per cent of his time, isn't that what you are saying? A. Yes. No, I said sixty to sixty-five per cent.

Q. Sixty per cent. But that is assuming that he is going to be working on those types of jobs only for three years, right? A. Uh-huh.

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[817] Q. Now, you didn't talk, or did you talk to the general contractor when you went out there? A. Did I talk to the general contractor?

Q. Yes, on the Westbury or Jeff Davis jobs. A. No, the superintendent on the Westbury School was, I spoke to him as I walked down the hall, but I didn't have any conversation with him.

Q. Oh.

Well, did you ask him, for example, at the Westbury School, that superintendent yesterday, if he knew of any other reason why that wall that you didn't like could have been out of plumb or out of square? A. No.

Q. Did you inquire of the plumber if perhaps he put his pipes in in such a way that the wall couldn't be plumbed? A. Well, the plumbing, as I remember, was all stubbed out with about six-inch stubs on it, and there was no restriction at the ceiling that I could see, and the plasterer had, as far as I could see, he had about six inches if he wanted to to come out there to plumb that wall up.

Q. And, of course, it's your opinion that in a building there [818] are no finished dimensions to make, if a plasterer want to bring the wall out six inches he just brings the wall out six inches, is that correct? A. Well, no, not in a sense.

Q. The architect will be quite upset about bringing a wall out six inches, wouldn't he? A. Probably so.

Q. Let me ask you this, when a job begins whose responsibility is it to strike a line to show where walls and doors are going to go? A. Whose responsibility is it to lay out the building?

Q. In effect to lay out the building, yes. A. I would say it would be the superintendent.

Q. The general superintendent, right. And he says this is where wall A is to go, right? A. Uh-huh.

Q. And door B, and so forth, right? And you are to work to where he puts the wall and where he puts the door, right? A. Right.

Q. The tile setters, even when they are putting the thin-set method on and they are only putting the L. & M. over a wall prepared by another craft, they can make mistakes so that the wall isn't going to have that perfect finish that you insist upon, can't they? A. About like a paperhanger can make mistakes hanging paper.

Q. Well, if you want to take that comparison, have you ever seen paper that has been hung on a wall that didn't match up right and didn't look right. A. Yes.

Q. So then your tile setters can also make mistakes, can't they? A. Yes.

Q. I am glad to hear you admit they are human.

Now, in your travels yesterday did you go to any jobs where the tile setters only put the dry-set mortar over backing prepared by plasterers? A. Uh-huh.

Q. To check and see if the tile setters have made any mistakes? A. No.

Q. You didn't do that? A. They made mistakes, all right.

Q. Who, the tile setters? A. Yes.

Q. But you didn't make any list and take the measurements, did you? A. Well, they made their mistake by covering it up, really.

Q. Well, now, you heard what I said. In the other jobs did you go to see them and make detailed measurements

about mistakes that the tile setters made? [820] A. Well, how could you determine what was a mistake? If the wall was out of square, out of plumb, it's going to throw the courses off. How could you tell whether he made a mistake or not?

Q. Well, now, you are telling me if the tile is already on and the job is finished you can't really be sure whose mistake it was, if it doesn't look good, aren't you? That is what you are saying, isn't it? A. No, I don't think so.

Q. You are not saying that. A. I can tell whether the foundation is straight or not, regardless of whether it's finished or unfinished. And the tile is going to be no better than the foundation behind it.

Q. You have never seen a tile job where the L. & M. wasn't mixed properly and it got a little bumpy back there and when the tile setter put his tile over nice straight backing he made it wavy? A. I don't recall seeing this.

Q. You don't deny that it could happen, do you? A. I don't deny that it could happen, but he would have to try to do it.

Q. But then in that case it wouldn't be the fault of the person who put up the backing, would it? A. No, it wouldn't.

Q. It would be the tile setter, wouldn't it? [821] A. Yes.

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[823] Q. Now, you talked about the art of your craft as being the float coat, do you recall that? A. Yes, sir.

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Q. Now, you don't claim gypsum when you put up tile over gypsum, do you? A. No.

Q. That back-up can effect the way your tile looks, can't it? A. That's right, when they buy tile put on that way they get what they pay for.

Q. Right.

But if you put the gypsum up you could give them the type of job apparently that you say you give them if you put the Portland cement up, is that right? A. We could control the finished room dimensions.

Q. Well, you could give them the straight wall you claim you give them if you put the Portland cement up, too, couldn't you? [824] A. Probably so.

Q. But you make no claim for that, the gypsum? A. No.

Q. Do you know how gypsum is put on a wall? A. With a hammer and nails for the most part, in this area.

Q. You are talking about—— A. Wallboard?

Q. Yes. How about gypsum plaster, how is that put on a wall? A. That is put up in plastic form by plasterers.

Q. How do they do it, do you know, what tools do they use? A. Mostly they use a blowgun.

Q. What other tools do they use? A. And they finish it with a hawk and trowel.

Q. What tools do you use to put it up when you use Portland cement? A. Hawk and trowel.

Q. Now, how about this little bubble thing you talked about? A. Pardon?

Q. This little thing with all the bubbles in it, the level. A. The level?

Q. Are the tile setters the only craft in the construction industry that use a level? A. I believe they are.

Q. They are the only craft? [825] A. Yes. The rest of them carry them, but I think they are about the only ones that use them.

Q. Now that you have given me that answer——

Hearing Officer: The record won't reflect that we were being funny here, I don't think, and——

Mr. Capuano: I certainly wasn't.

Hearing Officer: And I think we better be serious about this thing so that the record will be correct.

Mr. Capuano: I am.

Hearing Officer: Because it doesn't pick up inflections and so forth.

Q. (By Mr. Capuano) Now, are the tile setters the only craft that use a level? A. No, they are not the only craft.

Q. Carpenters use levels? A. Yes.

Q. Plasterers use levels? A. This I can't vouch for.

Q. You have never seen a plasterer use a level? A. I have on occasion.

Q. All right. Plumbers use levels? A. This I don't know.

Q. Bricklayers use levels? A. Yes.

Q. Now, you say the finished dimensions aren't available to [826] the plasterer.

Now, you weren't talking about the finished dimensions of the room, were you? A. Come again with that.

Q. You said on direct that finished dimensions weren't known to the plasterers on a job. A. I believe we qualified that, didn't we?

Q. How did you qualify it? A. I asked her if she was referring to the finished dimensions of the room or with the tile that was going to be used in the room.

Q. All right. I am sorry.

Well, let's take the finished dimensions of the room. You didn't mean that the plasterers don't know the finished dimensions of the room, did you? A. No, I don't mean that.

Q. All right.

They do know that as far as you know? A. Well, it's available to them.

Q. Sure, it is. And you were speaking only of the size of the tile right? A. Right.

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[838] Q. What do you mean by firm? A. Pardon me?

Q. You used the word firm before. A. In regards to what?

Q. In regards to mortar on the wall. A. Hard, in other words.

Q. Well, how hard is firm? How hard is hard. A. Well, it all depends on what you are going to put on it.

Q. Well, would you say a wall is firm after five hours? A. In some cases it would be more than firm. It would be hard or set.

Q. After five hours? A. Uh-huh.

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[841] Q. (By Mr. Capuano) Mr. McHargue, on this Anderson Library job what coat were the plasterers claiming? A. Pardon?

Q. On the Anderson Library job. A. They were claiming our float coat.

Q. All right.

Now, that was the, let's stay in the bathroom for a while, that was the first coat on the concrete or masonry wall and the second coat on the metal lath, is that right? A. Yes.

Q. And you put, the tile setters put on that coat? A. Yes.

Q. And this was the coat that the plasterers claimed, right? A. Yes.

[842] Now, did Longshore tell you those were the coats he wanted or that was the coat?

Pardon me? A. That is what I understood. Now, he didn't make any claims on the bathrooms, as I understand it.

Q. Well, you mean the bathrooms were finished by the time we had the strike, and so forth? A. When we had our first meeting out there was in in connection with the stair wells and the bathrooms were finished.

Q. Right, the bathrooms were finished at that time. A. Uh-huh.

Q. All right.

Let's take the stair wells, too.

You had a coat of mortar over the masonry wall, right? A. Right.

Q. And you had a scratch coat over the metal lath, then a second coat over the metal lath? A. Yes, that is in the metal partition.

Q. Right.

So there, too, he was claiming the first coat on masonry and the second coat on metal lath, right? A. Right.

Q. All right.

Now, did your International Union send you a copy or inform you—well, let me put it this way, did they send you [843] a copy of the Joint Board award of November 10, 1966? A. I believe so.

Q. Pardon me? A. November 10th? Yes, they sent me a copy.

Q. Did you get that around the date that it came down, in other words, in November? A. Well, I believe I got mine a little later than Mr. Longshore got his.

Q. All right.

That is P-3, and it's dated November 10th.

But you got it within November, anyway, won't you say? A. Yes, I would say.

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[847] Hearing Officer: On the record.

In a brief off-the-record discussion it's my understanding of our conversation that we can stipulate that Local 20, which is an affiliate——

[848] Mr. Shepherd: Subordinate.

Hearing Officer: Subordinate to the International—whatever the initials are——

Miss Thacker: B.M.&P.I.U.

Hearing Officer: Is bound to the decision of the National Joint Board, correct?

Miss Thacker: Yes.

Mr. Capuano: And, of course, so is our Local, Local 79. How about the Helpers Local, they would be, too, wouldn't they?

Mr. Shepherd: I think they would be.

Miss Thacker: I think they are.

Mr. Shepherd: Because we have a tri-party agreement with them from years ago.

Miss Thacker: They are bound through the national agreement. But there again they are not a craft, but then——

Mr. Capuano: They are part of the Building Trades.

Miss Thacker: But the Hod Carriers are not a craft, and they are one of the basic trades of the A.G.C., so you don't have to be a craft to be bound.

Mr. Capuano: So we are stipulating that all three local unions that are involved in this case are bound to the Joint Board, is that correct?

Hearing Officer: Is that right?

Miss Thacker: As far as I know, yes.

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[850] Q. And since we have already agreed that your local was bound by the Joint Board you did not comply with the Joint Board award, did you? A. I did comply with the Joint Board award.

Q. We just went over what work was in dispute. A. I know what we went over, but we put on one coat of mortar, which we are entitled to, and that is all we did, regardless of whether it was one or a dozen on there, we are entitled to the last, final coat.

Q. You are saying regardless of what the Joint Board says, [851] you are entitled to one coat, is that what you are saying? A. Well, yes.

Q. In other words, you have got this voluntary method for settling disputes, but you didn't like the way they decided that case so you didn't pay any attention to it? A. It says here that we are entitled to the final setting bed.

Q. That's right, but they did also say that the work in dispute, the coat you knew that was in dispute, was assigned to the plasterers, didn't it? A. Except.

Q. Well, I don't think we have to keep going back over this, but you told me, and I am sure I understood you, you knew exactly which coats the plasterers were claiming. A. That's right, they were claiming my coat.

Q. And then you got a decision which said the work in dispute, work the plasterers is claiming, shall be assigned to the plasterers. Now, that is pretty clear, isn't it? A. If you read it all.

Q. I have no objection to you reading it all. The last sentence says except the final setting bed. A. Except the final setting bed, which shall be applied by the tile setters.

Q. Well, did you write back to the Joint Board and say, "Well, clarify what you said"? [852] A. No, I told them the final setting bed was all we were doing on the job.

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[853] Q. Well, now, in this situation, I believe there has been testimony there wasn't room for two coats—— A. That's right, so that makes it our work. They are excluding the plasterer, not me. There is a final coat on that wall out there.

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[856] Redirect Examination

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[857] Q. All right.

Now, moving on to another area, we are talking about the wet float coat and the dry float coat. Does humidity have anything to do with the drying of the mortar? A. Yes.

Q. I would affect it? A. Yes.

Q. Higher humidity, what effect does it have on the drying? A. The higher humidity?

Q. Yes. A. The slower it dries.

Q. So do you have any idea how the humidity normally runs in this area? A. Well, there is a certain time of the year that you can control your mud pretty well and, say, this month and next month, possibly. Then in the fall of the year there is another month or so in there that you can control it pretty well, September and October, or October and November. And the rest of the time it's either burning up or hanging wet.

Q. Are the buildings where you work usually air conditioned or heated when you are in there [858] A. No.

Q. So then humidity is a big factor in the drying of your float coat? A. The humidity and the back-up that

you are working against, and it all depends on how the plasterer mixes his scratch coat and brown coat, and there are several different elements that could enter into it as to how your mud sits on the wall,

Q. These are all factors, you are saying, beyond your control? A. Yes.

Q. Beyond the tile layer's control. A. Yes.

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[861] JAMES F. O'CONNELL

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Miss Thacker) Mr. O'Connell, how long have you been a tile contractor? A. About eight years.

Q. Are you a tile setter? A. Yes.

Q. Do you belong to Local 20? A. Yes.

Q. Are you a member of the Local Association of Contractors? A. Yes.

Q. Are you a member of the National Association of Contractors? [862] A. No.

Q. Are you bound by decisions of the National Joint Board? A. No.

Q. Would you willingly bind yourself to any decisions? A. No.

Q. Do you do all types of tile installation, conventional float coat or one coat and thin-sets? A. All types.

Q. What per cent of your business is conventional or one float coat? A. Eighty per cent.

Q. Eighty per cent. A. Yes. Is conventional?

Q. Yes, conventional or one coat. A. Twenty per cent.

Q. Twenty per cent.

So that then if the tile setters lost that coat in this award you would lose that work? A. Uh-huh.

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[872]

CHARLES S. STRAWN

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Capuano) Mr. Strawn, would you tell me what your position is, please? A. I am Executive Director of Texas Lathing and Plastering Contractors Association.

Q. And what is the Texas Lathing and Plastering Contractors Association? A. It is a trade organization composed of lathing and plastering contractors in the State of Texas.

Q. And you are the Executive Director, you say? A. Executive Director, yes.

Q. Now, Mr. Strawn, let me ask you this, how long have you held this position? A. Since September, 1952.

Q. I am going to show you what has already been marked in this case as Exhibit P-16 and ask you if you recognize it? A. Yes, I do.

[873] Q. Could you tell me what that is? A. This is a joint specification guide that was developed by the Texas Lathing and Plastering Contractors Association and the Texas Ceramic Tile Contractors Association, setting out the general specifications for lathing, plaster and ceramic tile applications.

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[874] Q. (By Mr. Capuano) Could you tell me, please, what initiated the bringing together these two associations which resulted in the publication of P-16? A. Perhaps general problems between the lathing and plastering contractors and the tile contractors occasioned by the fact that in many specifications the responsibility of the tile contractor and the plastering contractor were not specific-

ally spelled out, and therefore we had questions come up on the job after the job was bid and also during the bidding processes as to exactly what was covered by the specifications.

Q. Were there any other reasons that the two groups got together? A. That and the need, recognized need to establish standards that were acceptable to both the tile contractor and the plastering contractor.

Q. Any other reasons? A. If I—

[875] Excuse me. A. We first became acquainted with the tile contractors association and tile contractors through our mutual interest in selling and promoting lath and plaster, in lieu, particularly, of structural glazed tile. We found that in our sales promotional work the two-inch solid partition with tile wainscoating was more economical than the structural tile and therefore we actively tried to sell that type of installation.

In doing this work I became personally acquainted with Charles Montgomery in Waco who is very enthusiastic and energetic in his sales promotional work.

Q. Of what product? A. Of ceramic tile. He was a ceramic tile contractor.

Q. I see. And that is what brought it about? A. This, in our discussions——

Q. With whom, now, are you talking? A. With Mr. Montgomery and others in the tile contracting business, we felt that it was to our mutual advantage to try to work out specifications that were acceptable to both contractor groups and to the architectural profession.

Q. All right.

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[878] Q. Did you also make any other arrangements with Mr. Montgomery around this time for a committee of tile contractors to meet at your convention? A. Yes, it was mutually agreeable that they would, a committee from the Tile Contractors Association would meet with our convention and discuss specifically the possibility of developing a joint specification.

Q. O.K.

Now, could you tell me who Mr. George Brueggeman is? A. Mr. Brueggeman is a lathing and plastering contractor here in Houston, doing business as Tobin & Rooney, is a past president of our association, and was active in the discussions on this specification.

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[880] Q. All right.

Now, were there several meetings held between the committees from the two associations on this, to work out this? A. There were, specifically I remember the one in Houston, even though I was unable to attend the one in Houston. There was one in Austin. I believe we had two different meetings in Austin. And there was other correspondence passing back and forth, or work sheets, involved in the specifications.

Q. You mean drafts? A. Drafts between the contractors association and the tile contractors association.

Q. All right.

I show you what has been marked as—or let me ask you this, first. Did a time come when you sent out to your membership one of the proposed specifications? A. This is the letter you handed me just a while ago dated December 3, 1959.

Q. And what exhibit is that, P-20-G? [881] A. This is P-20-G.

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Q. (By Mr. Capuano) Go ahead. A. This is a letter from Mr. George Brueggeman, who at that time was President of the Texas Lathing and Plastering Contractors Association, directed to TLPCA members, informing them of the committee meeting that was held in Houston and submitting some basic information that was developed at that time, and telling them that this was the beginning of the negotiations or the discussions, and inviting their comments and suggestions on the continuation of the work of the committee.

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[883] Q. (By Mr. Capuano) Before we get into this exhibit, do you [884] know whether when you sent your letter of December 3, 1959, out to your members, whether the Tile Contractors Association was notified that you were sending that out?

You will have to go back here. A. I believe so.

Q. This one here (indicating), P-20-G.

Do you recall whether they were notified that you were sending it out to your contractors? A. As I recall, it was agreed that we would each send it to our contractor members for their review and approval.

Q. The respective members? A. The respective associations would.

Q. All right.

Now, after this meeting you had in March, what else took place after that? A. The meeting we had in Austin in March you are referring to?

Q. Yes. A. We reviewed the work sheets and more or less firmed them up in accordance with the information furnished by the Tile Contractors and Plastering Contractors, and forwarded a copy of it to the Tile Contractors with a letter, suggested letter of transmittal as to how this specification in finished form would be transmitted to the architectural and specification professions.

[885] Q. All right. Is that what P-20-M is? A. Yes, it's addressed to members of the Plastering Contractors Committee and the Tile Contractors Committee, and we point out that the specification would not be transmitted by any or through either association but would be transmitted jointly, and we included for their review a memorandum addressed to the architectural professions and signed jointly by Mr. George Barnard, who at that time was President of the Texas Ceramic Tile Contractors Association, and Mr. Ray Taylor, who was President of our Contractors Association at that time.

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[886] Q. (By Mr. Capuano) Now, was there further discussion among your group concerning the specifications after that? A. After——

Q. After this. A. After that letter of transmittal went out?

Q. Yes, uh-huh. A. Yes, it was discussed among our contractors and the board members and in the meantime we had changed association presidents again, and perhaps like other things you get a little dilatory in completing projects, but when we got our new president of the association who was very interested in [887] going ahead and completing this thing since we had it practically in completed form, and getting it distributed, that was Mr. Joe Rourke, who was our new presisdent, or president of our Plastering Contractors Association.

Q. All right.

So would you tell us what P-20-O is, then?

* * * * * * * * * *

A. This memorandum is dated August 1, 1961. It's addressed to Mr. Bill McHargue, who had again become president of the Texas Ceramic Tile Contractors Association, and Mr. Joe Rourke, who was the new president of our association, addressed to them by me, attaching a copy of the transmittal guide that had been corrected in accordance with our previous discussions and a copy of the specifications agreed upon in joint committee meeting in Austin, March 13, 1960, and stating that if the letter of transmittal is O.K., had been cleared with Mr. Taylor and Mr. Barnard previously, and if it was satisfactory for the two new presidents for their signature, then we would proceed with the duplication and distribution of the specification that had been previously agreed upon, agreed upon by the committees from the plastering contractors and tile contractors associations.

Q. Now, was the letter of transmittal, which you included with the guide specifications, similar to what has

already been [888] introduced as—— A. With the exception of maybe one correction.

* * * * * * * * * *

Q. (By Mr. Capuano) Now, I show you P-20-P, -Q and -R, and P-20-P and P-20-Q are each four-page documents, and are basically [889], the same, and I ask you if you recognize P-20-P, -Q and -R? A. Well, I will start with P-20-P. Well, first, when the final, when we were finally in agreement, I say we, the committee from the plastering contractors and the committee from the tile contractors, were in final agreement on the specification, we sent a copy of the final draft to the president of the tile contractors who was at that time Bill McHargue, and to our president, who was Joe Rourke.

Q. Is that the August 1, '61 memorandum we just had here, P-20-O? A. Yes.

Q. All right. A. In which we asked them to each of them initial each page of the specification so there would be no question about what had been officially approved by each organization. These copies were returned by each association, initialed by Mr. Rourke and Mr. McHargue, each page of the specification so initialed.

Q. All right.

Now, taking P-20-P first, there are the initials—— A. J. E. R., Joe E. Rourke.

Q. All right. And those appear on all four pages? A. Correct.

Q. All right.

And on Exhibit P-20-Q—let me ask you this first, is [890] P-20-Q, the typed material, the same as the typed material on P-20-P? A. It's identical. Identical.

Q. All right.

And there are initials on the bottom of that. A. B. B. M.

Q. And whose initials are those? A. Bill McHargue, who was president of the tile association at that time.

Q. And do his initials appear on all four pages? A. On all four pages, yes.

Q. All right.

Now, could you tell me what P-20-R is? A. This letter is dated August 2, 1961, addressed to me by Mr. McHargue. It's a handwritten note in which he tells me the secretary is on vacation so he will write it, himself, in which he returned signed copies of the guide specification and mentioned the fact that he thought it was a very good idea, and he hoped that architects appreciate the combined efforts of our two associations and specifically mentions the work that Charley Montgomery did on this, along with some counsel from Bill Love.

Q. O.K.

Now, I am showing you P-20-S, -T and -U.

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[891] Q. And would you look at all three of those and then you can tell me what they are. A. This is P-20-S, -T and -U, and——

Q. Take the first one, S. A. All projects finally get around to money. This is a letter——

Q. Well, take S first. A. All right.

Q. That is the letter of August 4, isn't it? A. Dated August 4, in which I addressed a letter to Mr. Bill McHargue, thanking him for returning the specification, and telling him that we planned to run twenty-five hundred copies, that approximately sixteen hundred copies will be mailed to architects along with the accompanying letter.

Q. That was the letter that had been agreed to? A. That had been returned previously, yes.

Q. Right. A. And telling him that we had already typed the envelopes to mail to the architects and the cost of the printing would be one hundred eighty dollars, and that I wondered if his organization, the Tile Contractors Association, would be interested in bearing any part of the printing expense.

[892] Q. All right.

And P-20-T?

A. Is dated August 8th, 1961, addressed to me from Mr. Bill McHargue, telling me that the matter of sharing

the cost of the printing of the specification would have to be brought up at their board meeting, which would be in January of 1962.

Q. That is of the ceramic tile—— A. Ceramic Tile Contractors Association, yes.

Q. All right.

And P-20-U.

A. Dated August 11, 1961, addressed to Mr. Bill McHargue, by me, telling him not to worry about the cost, that we would go ahead and mail the specifications out and would still welcome any financial assistance that they might give us as a result of their board meeting.

Q. Now, did you handle the mailing of the specifications? A. We mailed them and in this note I notified him that they had been mailed. We mailed seventeen hundred copies to architects and specification writers, and sent one hundred copies to Mr. McHargue for whatever distribution he wanted to make among the tile contractor members.

Q. Were they architects here in Texas? A. Yes, sir, only in Texas.

Q. Were some of them from the Houston area? [893] A. All over the State of Texas.

Q. All right. A. They were mailed out in accordance with the registry of the Texas Society of Architects.

Q. All right.

Now, is P-16 a duplicate of what you sent out? A. This is what was sent out, signed by Mr. McHargue and Mr. Rourke, just as it is here, without any letterhead on it.

Q. You had no letter head on the one you sent out? A. No, no.

Q. All right.

Now, let's see, it was Mr. McHargue who said in P-20-T, I believe, that they were going to take up the financial question in their January, '62 meeting. Did there come a time when you received anything further from the——

A. Shortly after the Ceramic Tile Contractors meeting in January, '62 we received a check from the Tile Contractors Association in the amount of ninety dollars covering half of the printing cost.

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[900]

Cross Examination

Q. (by Miss Thacker) Mr. Strawn, what is the purpose of the association which you represent? A. We are a trade organization rendering a service, a membership service, to our members on business matters, contractual documents. Also we are interested in the promotion of the lathing and plastering industry, furnishing technical service to our members, and coordinating the work of our association with other industrial groups throughout the country, plastering groups throughout the country.

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[906] Q. (by Miss Thacker) Who were the members of the Tile Contractors Association that you met with on the committee? A. I do not have any record of their activity.

Q. Well, now, I notice here in P-20-G, you make reference here to certain—now, here again this is written from Mr. Brueggeman. [907] A. Yes.

Q. I notice here that you make mention of—— A. Mr. Brueggeman makes mention.

Q. Yes. Makes mention of certain men here, Charlie Montgomery, Bill Love, Lee Munz, and a Mr. Young.

Now, who were these people? Were they on the Tile Contractors committee or who were they? A. I presume so. This was a meeting that I did not attend.

Q. You did not attend? A. Yes. And let's see, Mr. Brueggeman states he sat in with a representative of the Tile Contractors Association which included the persons you named.

Q. So you couldn't verify this, then. A. Mr. Brueggeman could.

Q. But you could not. A. No, I was not present. This letter was mailed by the association office for Mr. Brueggeman.

Q. Yes.

Well, now, then you didn't dictate this letter. A. I expect this was written in Mr. Brueggeman's longhand, made from notes at the meeting. Normally that way our association operates.

Q. Do you know this Mr. Young that they refer to here? A. I do not know Mr. Young, no. I do not believe I do.

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[914] Q. (By Miss Thacker) Now, Mr. Strawn, this guide, guide for specifications, this was prepared by whom, both associations or how did it come to be? A. It was prepared in joint committee meetings between the Plastering Contractors Association and the Tile Contractors Association. After drafts had been worked on on different occasions and mailed to the parties concerned, the final draft copy was prepared in our association office, the Plastering Contractors Association office, and forwarded to the officers of both associations for their approval and authority to print and distribute.

[915] Q. Now, you said to the officers of both associations. A. Yes, ma'am.

Q. Was there any presentation to the membership of both associations? A. To our membership there was. The Tile Contractors Association I have no knowledge of it.

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[917] Q. But to your knowledge there were no actual demonstrations or trial runs made in this? A. In connection with this specification, that's correct.

Q. Now, to your knowledge was there any union representatives present or did they have an opportunity to participate in the preparation of this guide? A. The unions were not a member of these committees.

Q. Yes. A. And our International Union was furnished copies of it as a matter of information.

Q. The lathers and the plasterers? A. Yes, the Plasterers International Union, but they were not—

Q. Well, you also have contracts with the lathers. Were [918] they furnished copies? A. This specification did not particularly refer to the lathers or lathing operation.

Q. Well, it did insofar as the metal lath— A. That is normally an accepted presentation, yes.

Q. Yes. Now, you say this was referred to the Plasterers Union? A. Yes.

Q. Internationally or locally? A. To the International business, I mean their International representative, yes.

Q. Mr. Power? A. No, Mr. B. F. McClellan.

Q. Oh, Mr. McClellan, the International man for this area. I know him. A. Yes.

Q. All right.

Now, to your knowledge did the plasterers sit in on any of these committee meetings or make any recommendations? A. To my knowledge they did not.

Q. Do you know anything about the tile setters, did they offer any information or data to your committees in connection with it? A. That I do not know.

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[922] Q. Then would you say that in the writing of any specifications or any guides that it would be necessary to consider an agreement between the two crafts that you are dealing with? A. The guide specification that you refer to was developed by a joint committee of the Plastering Contractors Association and the Tile Contractors Association. It is a [923] specification for use of the architect in specifying building needs. A copy of the specification was furnished to the Plasterers International Union representative, and I do not know whether the Tile Contractors so consulted their representative.

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Q. All right.

Then are you telling me that your specifications, as far as you know, from the standpoint of your association, was made up without any conferences or any regard to the crafts that are involved? A. No, I can't say that.

Q. All right. Can you tell me, then, that they were?

Mr. Capuano: I believe he wanted to finish an answer. A. Mr. McClellan was furnished a copy and his suggestions or the suggestions and recommendations of his international union were invited.

Q. (By Miss Thacker) Did he respond? A. I believe so.

Q. He went before your committee? [924] A. He did not appear before the committee. Neither did other members who had an opportunity to review the specification appear before the committee.

Q. What about the tile people? A. You will have to ask them about that.

Q. You don't know anything about that? A. No.

Hearing Officer: Let's define the tile people. Are you talking about the union or the association?

Miss Thacker: No, no, in this guide, Mr. Hearing Officer.

Hearing Officer: Well, I mean, you are talking about tile people. Are you talking about the Tile Setters Union or the Tile Contractors Association?

Miss Thacker: Yes, I am talking about the union furnishing any information.

Hearing Officer: O.K.

Q. (By Miss Thacker) And you say you don't know? A. That's correct.

Q. You don't know whether they did or they didn't. A. The information was furnished to the Tile Contractors Association for whatever distribution they deemed proper to make.

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[928] Recross Examination

Q. (By Miss Thacker) Mr. Strawn, do you know if this guide has been approved by the membership of the Texas Ceramic Tile Contractors Association? A. I do not. Copies, one hundred copies were furnished to the Tile Contractors Association at the time it was completed.

Q. Did you send them out? A. Yes.

Q. You sent them out— A. From—

Q. —from your office? A. In Austin, yes.

[929] Q. All right.

Was that the completed guide or the guide in its working stages? A. That was a guide after it had been finally approved by both associations.

Q. Now, what constituted approval by the Texas Ceramic Tile Contractors Association? A. It was sent to their president.

Q. By you? A. By the Austin office, yes.

Q. Yes. A. By the Contractors Association office.

Q. All right.

Now, you sent it to the president. A. Yes.

Q. Then what? A. And asked for the final approval of their association. He returned it with his approval and initialed each sheet of the master copy of the specification or the guide.

Q. Do you know whether it was submitted to the membership— A. I do not.

Q. —of the Texas Ceramic Tile Contractors Association? A. No, I do not.

Q. Did he make any, he, the president of the association, did he make any indication to you as whether or not it was [930] submitted to the membership? A. I do not recall that he did, no.

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GEORGE H. BRUEGGEMAN

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

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[931]

Direct Examination

Q. (By Mr. Capuano) Mr. Brueggeman, will you tell me what business you are in, please? A. I am a lathing and plastering contractor.

Q. And what is the name of your company? A. Tobin & Rooney, Inc.

Q. And what is your position with Tobin & Rooney? A. President of the company.

Q. How long have you been with Tobin & Rooney? A. Since January 1st, 1946.

Q. Would it be fair to say that you are one of the larger plastering and lathing contractors in this Houston area? A. I am one of the larger ones, yes.

Q. Now, in connection with your business does your company prepare walls to receive tile? A. Yes, we do.

Q. And could you tell me what materials you use to do this? A. Well, depending upon the specifications, we, of course, as lathing contractors, if lath is involved we apply the lath, [932] and we do the scratch coat and brown coat either out of a gypsum plaster or out of a Portland cement plaster.

Q. Now, could you define for me the words plaster materials? What would that include? A. Well, plaster materials, as such, are cementitious materials and we use various products. Gypsum is one of them that is refined into a plaster and is generally regarded as plaster. But we also use to a great extent Portland cement plasters. As a matter of fact, I would say possibly forty per cent Portland cement plasters and around sixty per cent gypsum plasters. But we refer to them as plaster, both of them.

Q. You mean forty per cent of your business is the use of Portland cement plaster? A. Yes.

Q. Could you tell me how Portland cement plaster is applied to a wall? A. Well—

Q. I mean the tools used, for example. A. Well, if it's a hand application it's applied with a hawk and trowel. If it's a machine application it's pumped onto the wall and rodded off and screeded.

Q. Could you tell me how gypsum plaster is applied to a wall? A. Exactly the same way.

[933] Q. Now, could you tell me if you have jobs, particularly individual jobs, where the tile is applied on the same job over both Portland cement and gypsum plaster? A. You mean on the same job tile being applied to Portland plaster as well as gypsum plaster?

Q. Yes. A. Yes, there are jobs, for instance, we go into, say, bothroom areas in which we would apply gypsum plaster to which tile is applied, and in, say, the shower area or the tub area, itself, we would apply Portland cement plasters. In a case like that both materials would be used in the same, say, given bathroom area.

Q. I see.

What craft would apply this gypsum and Portland plaster? A. Plasterers.

Q. Do you have a collective bargaining agreement with the Plasterers Local 79 here? A. Yes, we do.

Q. And this work would be included within that agreement, the work you are— A. Yes.

Q. Now, could you tell me after your company through its plasterers applies—let me ask you this first, if tile is going to go on a wall in one of your installations, what coat or coats of plaster will your company apply? [934] A. Basically if we are going over metal lath we would apply a scratch coat and a brown coat.

Q. And then what would come after that for the tile? A. Depending upon the specifications, if it were a thin-set application they would apply a coating of thin-set material and then their tile. If it's conventional, they would apply

a setting bed coat, of, oh, approximately three-eighths or something like that, and then apply their tile to that setting bed. In other words, the setting bed is acting as the bond between the materials.

Q. I see.

Now, when your company is installing the—well, let's define these coats, now. The first coat would be the scratch coat and the second coat that you put on would be what? A. Would be the brown coat.

Q. Would be the brown coat. Would that also be the plumb coat, too? A. Yes, it's referred to as a plumb coat.

Q. All right.

Well, now, when your company is applying the brown coat to walls that are going to receive tile in the thin-set method, as you described, could you tell me if any other crafts besides the plasterers have ever made claims upon you for this work? A. On thin-set, now?

[935] Q. Yes. A. I don't recall—let's see. Thin-set.

Q. In other words, for your brown coat. A. I don't recall in a thin-set application of any claim. I think we have had—again I am not real familiar—

Q. Well, I mean to you, so far as you know. A. Well, for instance, take one of the—shall I name names as far as jobs?

Q. Sure. A. I am thinking of the University students center. We were putting up what was called for in the specifications as a plaster, solid plaster wall. We scratched the metal lath. We intended to brown it, and there was a dispute over the brown coat. I don't know whether this was going to be thin-set. According to my reading of the specifications it was going to be a conventional set. But I am not positive one way or the other whether it was going to be or whether it was applied thin-set. I didn't follow the job through.

Q. Well, leaving that one dispute aside, have the tile setters ever made any claims upon you for the installation of your brown coat? A. Actually when I have it in my specifications I have never been involved with the ceramic

tile union. They have never claimed, they have never tried to get me to use their employees.

[936] Q. O.K.

Now, do you operate in the Houston metropolitan area? A. Yes, I do.

Q. And you operate in other areas also, is that true? A. Yes, I do.

Q. All right.

Now, could you give me, if possible, a few jobs where you have installed at least a brown coat of mortar, you may have installed a scratch coat behind it, and at least a brown coat of mortar, where tile was then installed by a tile contractor over your brown coat with one of these dry-set mortars in the thin-set method? Can't you think of some jobs offhand? A. Oh, there are many jobs that we have applied. I could go all the way back to, well, Methodist Hospital would have been one.

Q. Is that in Houston here? A. That is in Houston here.

Q. Approximately when? A. Well, we have been on three different jobs there over the past seven to ten year period in which we have applied—

Q. You have applied the brown coat? A. Yes, uh-huh.

Q. And the tile setters have come in and used a thin-set mortar to apply their tile? [937] A. Yes.

Q. All right.

Can you think of another job? A. Fannin State Bank Building, as I recall, was the thin-set method. It's a little bit difficult for me to tell you what are thin-set and what are—because we take them up to the brown coat, and other than that I really don't follow through to know whether they are thin-set or conventional sets after that.

Q. But you do at least put the brown coat on? A. We put the brown coat on.

Q. Now, could you tell me in which section of the specifications the brown coat of mortar is generally included? A. Generally the brown is included in the lathing and plastering, I mean, in the plastering specifications.

Q. And do you bid on it then? A. We bid on it then. And even in cases where it is not, and there are cases where it is not, we bid it as an additive or alternate. In other words, our base bid is x number of dollars and if we do the brown coat add x number of dollars to our base bid is the normal procedure we use.

Q. Now, how many years did you say you have been in business here or associated with this company? A. Sinee '46.

Q. Since '46? [938] A. Uh-huh.

Q. Now, could you tell me in your experience since 1946 what would be the area practice in this Houston metropolitan area for the preparation of walls with Portland cement where tile is going to be installed over them after your brown coat of mortar is dried? Which craft would you say has the area practice of installing that brown coat? A. The plasterers to my knowledge have installed it all times unless there was an argument on it, and I would say at least in ninety-nine per cent of the cases that the brown coat has been installed. I am talking about commercial work, the type of work I am involved in.

Q. Yes. A. Residences I know very little about.

Q. Yes, commercial work. You say ninety-nine per cent of it has been installed by the plasterers? A. In the jobs that I have worked on.

Q. Yes.

Now, could you tell me if you have ever had complaints from tile contractors about the workmanship that your employees do in preparing the walls for tile? A. From tile contractors?

Q. Yes. A. Yes, I have had some. It's been more prevalent, I would say, in the last, you know, few years.

[939] Q. Is there some reason for this? A. Oh, basically, and again this is a personal reason for it as far as I am concerned, to me it looks like there is a trend for the ceramic tile union to be wanting to do this work as opposed to a plastering journeyman doing it, and if there is any reason that the thing is not done exactly to their liking,

they make a mountain out of a molehill, to use an expression. But it hasn't—we haven't had very much of this. I can see a trend that way a little bit, though.

Q. Now, could you tell me whether you have ever seen tile setters, craftsmen tile setters, apply Portland cement to walls? A. Yes, I have, for the setting bed. Is that—

Q. For the setting bed of tile. A. For the setting bed of tile, yes.

Q. And you have seen plasterers do it, I assume. I don't mean the setting bed. A. Not the setting bed. I have seen them apply the scratch coat and the brown coat, yes, many times.

Q. All right.

Can you tell me from your experience in watching both crafts which craft is more skilled in performing this work? A. Well, as far as the scratch coat I don't think I have ever seen ceramic tile men ever do that. It is really done all the time by the plastering union journeymen.

[940] Q. Take the brown coat. A. The brown coat, actually that is the type of work we do all the time is wall work, and I would say that a plasterer will do quite a bit more of it, that is the type of work that he is more involved with in his every-day work. Whereas, the ceramic tile man, I would say that he does equally as good a job as we would do as a plasterer, but he is involved with floors as well as walls, and there is a little bit different knack of doing it, and I would say the plasterer is more proficient in it.

Q. He could cover a larger area, is that what you meant? A. Yes. But quality-wise I would say that they do as good a job as we would do, as far as quality is concerned.

Q. Now, getting back to a typical commercial job, say in a bathroom, would you tell me, assuming you have got both gypsum, say you have got a tile wainscoting around and then gypsum walls above that. Would that be a typical installation? A. Yes, it would.

Q. All right.

Would you tell me how your company or crews would go about doing this work in there, assuming you are going to

do the brown coat behind the tile? A. If it's over metal lath, of course we would apply to the entire wall area the scratch coat, first of all. Then we would—

[941] Q. Wait a minute. Now, you said the entire area. You mean the walls behind the tile and— A. The walls behind the tile and the plaster would be done, that would be the first thing, to scratch out the walls.

Q. It would be done in one operation, you mean? A. Well—

Q. I mean at one time you would do the whole wall? A. Well, for instance, we are involved sometimes with a complete scratch coat of Portland cement, in which the whole wall will be done at the same time, and that is generally the way we do it. There are specifications that the architect might specify a scratch coat of gypsum behind a brown coat of gypsum.

Q. I see. A. In which case we would scratch the Portland cement, then scratch the Gypsum plaster. Then the next application would be the brown coat behind the ceramic tile, and then the brown coat over the gypsum, and then a finish coat over the gypsum, and then we would be finished with our part of the installation and leave it for the tile man to do his installation. And there are times, too, according to the specifications, where the tile might precede our final coat of gypsum.

Q. You mean the white coat of gypsum, which would be your final? A. Yes, the finish coat.

[942] Q. Well, up to that, assuming the specifications call for your white coat of gypsum to be applied after the tile, would you have already put in your brown coat of gypsum— A. Yes.

Q. —and brown coat of Portland on it? A. Yes, the brown coat application would have been finished.

Q. I see.

Now, could you give me some examples of where you as a plastering contractor used Portland cement other than as a back-up for tile? A. Oh, there's many—for instance, usually on the interior and the exterior of walls of buildings

are done out of Portland cement plaster. We do a lot of stucco on the outside of buildings as far as the wall areas are concerned. We get a lot of overhangs, you know, the soffits on the outsides of buildings, which are all Portland.

Q. Are they called canopies sometimes? A. Canopies and soffits. We are extensively involved in marble-creting on the outside of a building which is all Portland cement products, in which we imbed marble chips into the final coat.

Q. Would you have it in shower rooms? A. Yes, we would have Portland cement in shower rooms. Wet areas, we use Portland cement in wet areas.

Q. Do you use Portland cement where it's going to be the [943] finished application also, in other words, without a covering of tile? A. Yes, we do. We do it both ways, you know, gypsum, for instance, Keene cement, we use as a finish coat over the Portland cement, and we also use Portland cement over Portland cement.

Q. What is Keene cement? A. Keene cement is a high calcium gypsum.

Q. What does that do, give it a hard finish or something, waterproof finish. A. It's more impervious to water than, say, the regular gypsum.

Q. I see. I believe you said you were also a lathing contractor— A. Yes.

Q. —as well as plastering? A. Yes.

Q. Does your business as a lathing contractor bring you into contact with the construction of walls? A. Yes, it does.

Q. Could you tell me how, in what manner? A. Well, generally as a lathing and plastering contractor we feel that we are wall and ceiling applicators, and we promote all the time the use of our product in walls and ceilings.

[944] Q. Well, what would you do in connection with the building of a wall as a lathing contractor? A. Well, if this were a wall here, I would probably have a door frame there and I would set up either a steel stud of channel or wire

stud of some type, put metal lath or gypsum lath on both sides.

Q. In other words, you would— A. And scratch, brown and finish.

Q. In other words, you would build the wall right from scratch, is that what you are saying? A. Right from the beginning.

Q. Including the studing in it? A. Yes.

Q. Now, do you also build, as a lathing and plastering contractor, solid partition walls? A. Yes, we do, but it's done very much the same way. We use a three-quarter inch channel as a stud, lath one side and put five coats of plaster on the walls.

Q. What is that, on both sides, you mean? A. On both sides.

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[946] Q. O.K.

Now, I show you what has been marked P-23 for identification, and I ask you if you can tell me what that is, by name. A. Well, it's the same type of specifications as this P-21 except that instead of covering, as this one does, gypsum plaster and interior lathing and furring, this regards [947] Portland cement plastering, Portland cement stucco.

Q. I see. A. And is put out by the same people.

Q. You mean— A. By the architects and testing lab, American Society for Testing Materials.

Q. All right. And the American Standards Association, is it? A. American Institute of Architects and American Society of Testing Materials. It's approved as a standard by the American Standards Association.

Q. All right.

Now, could you tell me if there is some document that you as a contractor would refer to as a standard when you wanted to check on a particular product or method of installation? A. Normally where this comes into being is in specifications as written by the architect. He tells us

that we are supposed to do a certain item, say plastering, according to the following conditions, sand has to meet specification so-and-so as described in here, the gypsum—

Q. Described in where, now? A. Described in these books.

Q. You mean the American Standard Specifications? A. Yes.

[948] Q. In other words, the architects refer you to them, is that correct? A. Yes.

Q. Would you know whether they are a commonly accepted standard for your industry? A. Oh, this is used more than our own Texas lathing and plastering specifications or even our national specifications because it's more generally known and accepted.

Q. You mean the American Standard Specifications? A. The American Standard is, yes.

Q. Do you know if they publish standards for other materials and installation of other construction? A. I believe they cover the entire range of building construction.

Q. I see. O.K.

Now, Mr. Brueggeman, I am going to show what has been marked as Exhibit P-16, has been received in evidence as P-16. And ask you if you are familiar with that? A. Yes, I am.

Q. And could you tell me what it is? A. Well, it represents a specification that was jointly worked on by the Texas lathing and plastering contractors association and ceramic tile contractors here in Texas.

Q. All right.

And were you a member of the committee that at least [949] started to work on this when you were president? A. When I was president I was an ex officio member of the committee, yes.

Q. And did you participate in any of the meetings leading up to that specification? A. Yes, I attended the one at the Ben Milam Hotel here in Houston.

Q. There was one held in Houston. A. In Houston. And one in Austin.

Q. All right.

And were there various drafts that were exchanged back and forth concerning this before the final was approved? A. Yes, there were.

Q. All right.

Now, I am going to show you exhibits which have been received, P-20-D and P-20-G, and ask you to look at those for a moment. A. Yes, I am familiar with them.

Q. All right.

Now, were those documents sent out under your direction? A. Yes, uh-huh.

Q. Both of them say that they are from you, is that correct? A. Yes.

Q. And they were sent under your direction? A. Yes.

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[950] Cross Examination

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[955] Q. All right.

Now, Mr. Brueggeman, in the last two or three years have you done more thin-sets than you did before? By thin-sets I mean more preparation of walls for thin-sets than you did prior to that time. A. In the last two years or three years?

[956] Q. Yes, in this period of time, now, that you state that this effort has been afoot, have you done more jobs where you have put in the back-up for thin-sets than you did before? A. No, I wouldn't say so. I would say that the thin-set is a little bit on the upgrade all the time. In other words, assume there was a period of fifty per cent conventional and fifty per cent, I would say we would be now up to sixty and seventy, maybe even up to eighty, in other words, going more to thin-set applications.

Q. Now, your brown coat, do you scratch it? A. On thin-set, no. On conventional we will if we know that he wants it scratched, the tile contractor.

Q. You ask him? A. As a rule.

Q. Now, getting back to this other thing we were talking about, and that is your information on the art of tile setting, do you, at the time that your men put in the brown coat, do you have available to you or are you familiar with the tile installation that is to come? A. Well, normally a plasterer foreman on the job has to read the tile specifications pretty much the same as he does the lathing and plastering. First of all, he has to find out that the architect hasn't made a mistake. He has to find out whether it's going to be thin-set. He has to find out the thickness of the tile that is going to be used. [957] And generally speaking while the general contractor superintendent gives us a lay-out of all rooms that lay-out indicates the finished wall, and we have to know pretty much how we are going to get out to there. In other words, do we leave one inch, a half inch, three-quarters of an inch? And we have to talk to the tile contractor and talk to him as to his installation.

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[958] Q. Now, as a construction man you understand and appreciate how the course of tile have to be laid out and how the joints have got to be straight and how the dimensions may be altered through the joints and in different manipulations. A. Uh-huh.

Q. Do you feel that you would be sufficiently qualified to make, to finish a wall in your brown coat with this object in view, this tile installation, without knowing all of these things that are involved? A. Well, the foreman on the job should know as much about it, say, as the ceramic tile man, who is going to make the installation, if he knows the materials that he is going, that the ceramic tile man is going to use. In other words—

Q. Does he have those available to him? Does he have the tile available to him at the time he is putting up his brown coat? A. Sometimes he does and sometimes he doesn't, but he should talk it over with the—

Q. If he doesn't have it could he finish the room properly, if he doesn't know it? A. Not unless he knows what the sytem is, he couldn't, he would have to find out.

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[961] Q. Now, do you feel that there's perhaps a greater amount of skill required in the application of this brown coat, as you call it, where it is to receive tile than where this brown coat is then for you to put on your finished plaster? A. I didn't follow that quite—if—

Q. Do you feel that there is a greater skill required in this brown coat, as you call the coat in dispute, if it is going to receive tile than it would be if you put a brown coat on this wall, which you were going to ultimately plaster? Is there as difference? A. There isn't a difference except you have to be more exacting.

[962] Q. You have got to be more exacting. Why? A. Because ceramic tile doesn't bend in any way.

Q. And you have got courses to— A. That's right.

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[965] Q. And what is the name of the coat in issue that the tile setter and the tile contractor calls it? A. Well, I am not exactly positive, to tell you the truth, because of the fact that it gets—they use a little bit of terminology that we don't use. In other words, I use scratch, brown, setting bed. Now, they have got a float coat [966] in there which to me could be either the setting bed coat or the brown coat. And frankly I don't know. Now, to me there can't be a question about the leveling coat behind a thin-set method. I don't think we have ever had a problem in this town based on that brown coat nor have we argued about that particular one under thin-set. We do get involved, frankly, I know of one at the University of Houston, I know of the problem we had at Rainbo Baking. The one at the University of Houston there was extenuating circumstances. We applied our scratch coat. We wanted to apply what we called our brown coat. The tile setter said "I don't have room for you to do it." And there was a

problem of room because the concrete stairs were laid a little bit out of kilter for our wall coming down between the two stairways. On the Rainbo Baking I don't know how the job was done. But on thin-set, where we have solid walls, we even permit tile under thin-set to go directly to another type of wall, concrete block, and so on. It goes over gypsum board every day. We just question, as far as I understand the arguments that we have been having, the leveling coat or as we would call the brown coat behind.

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[968] Q. (By Miss Thacker) Now, Mr. Brueggeman, do you always scratch your brown coat? A. No, we do not always.

Q. Are you scratching it any less now than you used to scratch it? A. Before thin-set method came into being, we did scratch what we would call our brown coat to receive a setting bed. With the advent of thin-set and whenever we have a thin-set application, we do not scratch it.

Q. Why? A. Because you don't need the scratch as far as I understand to get the bond. That is what the bonding material is doing. [969] With a Portland cement setting bed you actually need a mechanical bond. With the chemical bonding agent you don't need that.

Q. So that are you telling me that if you scratched your brown coat you couldn't apply the bonding agent? A.. Oh, no, it would just mean that you would be using more of it and it would serve no purpose.

Q. Can the bonding agent be put on thick? A. I think there are restrictions as to how thick it can be. It's put on relatively thin. Generally in the area, I would say, of an eighth of an inch as opposed to three-eighths.

Q. But generally in order to apply the bonding agent you have got to have a smooth surface? A. You don't have to have a smooth surface as far as I know. Again this is getting in the field beyond me. This becomes—

Q. Well, you are a plastering contractor and brown coats

are generally scratched, aren't they? A. No. For instance, in plastering brown coats are not scratched.

Q. Well, now, Mr. Brueggeman, are you aware of the green book? A. Yes, I am aware of the green book.

Q. You are familiar with this 1917 agreement? [970] A. Yes, we referred to the 1917 agreement when we discussed this specification that we had.

Q. So then you know what it says? A. No, I don't know exactly. I would have to refer to it to know what it says.

Q. Well, would you read it over to yourself while I am finding something? A. (Witness complied.)

Uh-huh.

Q. What does this agreement have reference to? A. It has reference to who does what in the application of ceramic tile under the conventional set.

Q. Well, what does this say right here (indicating)? A. Preparation of walls and ceilings to receive tile.

Q. And who is this agreement between? A. Between the O.P. & B.M.P.I.U.

Q. Do you know of any other agreements the two crafts have made? A. No, I don't know of any other that the two crafts, themselves, have made. There may be others, but I am not familiar with them.

Q. Now, insofar as the work of the plasterer is concerned, does it say how many coats he has? A. It doesn't mention any number as far as I can read here.

Q. It doesn't say whether he has had one coat or two coats, [971] does it? A. No, but it implies, at least, one more coat than one.

Q. Where does it say that, Mr. Brueggeman? A. Well, because it says they shall plumb, rod and square all walls.

Q. Well, now, where does it imply that there is to be a second coat there? A. Because you cannot do this in a scratch coat. You need a firm backing of some type. That is the purpose of the scratch coat, to give you a firm backing on which you can square out a wall and plumb

it. You cannot possibly do it in a scratch coat. It's wet material. It wants to run down the wall. And we have to have a firm backing so that you can rod or plumb or square a wall. It's just not possible to do it with a scratch coat. When we get finished with a scratch coat there are variations of at least three-eighths of an inch, and that is why the second coat is required for plumbing. With a wet material you can't square a wall.

Q. What does it say the tile setter is to do? A. Actually the way I am reading it it doesn't tell him to do anything.

Q. Does it say what coat he is to put on? A. They shall plumb, we are talking about plasterers; plumb, rod and square walls and scratch the same so as to guarantee adhesion of the final coat. The final coat would [972] be put on by the tile layer.

Q. All right. A. Uh-huh.

Q. Now, would there be anything wrong with him doing the final plumb, rod and square? Is there anything in there that says he can't? A. Well, it says here the O.P. is supposed to plumb, rod and square and the tile layer shall put the final coat on, which would be the setting bed or mechanical, I mean, the chemical adhesive, thin-set method.

Q. Well, now, you see, the reason I am asking you this is that you tell me that it's tacit in this agreement that the plasterer has two coats, is that correct? A. When it goes over methal lath he has to have two coats.

Q. Is there anything in here that says it's over metal lath? A. No.

Q. All right.

You tell me, though, that it's tacit that he has two coats, the plasterer has two coats. A. When it is put over metal lath he has to have two coats in order to plumb. Now, over a concrete block wall or a masonry well he would only need one coat, which would be the plumbing and rodding and squaring of all walls.

Q. Now, does it say in here what the final setting bed that [973] belongs to the tile setter, what is to be done to it? A. It just says the final coat shall be put on by the tile layer to act as a bed for his tile.

Q. And it doesn't say anything about what he is to do to it, does it? A. No, it doesn't, as far as I can read.

Q. All right.

Then the final responsibility, then, rests with the tile setter, doesn't it? A. He has to in most specifications guarantee the workmanship on his, of his job, but at the same time most specifications carry a clause that all walls shall be inspected by him prior to installation, and if there is anything wrong with them call it to the attention of the architect.

Q. Yes. A. Which is normal in most relations between subs.

Q. Now, would you think that in the installation of his final setting bed that then he would do the final plumb, rod and square, to remove all inequalities? A. On conventional he would have what he would call his setting bed, and I would call his setting bed, that would act as a setting bed for his tile, and at that time he can, if he—he will do it with, oh, wooden lattice strips, and so on, or metal lattice strips. He can.

Q. Then—

[974] Mr. Capuano: Let him finish, please.

A. He can do it.

Q. (By Miss Thacker) Would it matter, then, whether the plasterer would plumb, rod and square it if he is going to do that? A. On a conventional set the work of the plasterer wouldn't have to be as accurate for conventional as it would for, say, thin because there is another opportunity to pick up any differences with his bedding coat.

Q. Then the plasterer wouldn't have to put on two coats, would he? A. Well, again, yes, he would. On metal lath he would have to put on two coats, a scratch coat in order to stiffen up the wall that he could put

on the coat that would square, plumb—what other terminology do they use?

Q. Rod. A. Plumb, rod and square.

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[976] Q. (By Miss Thacker) Now, Mr. Brueggeman, do you see any difference in this original agreement, as we have here in the green book—I note this agreement in the green book is between unions. These two letters are the views of a few men—

Mr. Capuano: Oh, now stop characterizing that, would you?

Q. (By Miss Thacker) —of the Joint Board.

Mr. Capuano: Just ask him questions about it.

Q. (By Miss Thacker) Now, do you see any differences in these decisions, these two decisions, in the original agreement? A. I can't see.

Q. You can't? A. No.

Q. Well, let's go over it, now. Let's look here at the agreement. It says here—what does this say here as to the plasterers? A. They shall plumb, rod and square all walls and scratch the same so as to guarantee adhesion of the final coat.

Q. All right.

Do you see in here anywhere, either one of these two decisions, where it says the plasterers are to do that? Show [977] me. A. Well, it says here in the thin-set method of applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar, that is, the scratch coat and plumb coat. The plasterers shall plumb, rod and square all walls. They are using the same terminology here.

Q. Do they say scratch? A. Plumb, rod and square. Plumb, rod and square.

Q. And what? A. And scratch.

Q. Do you see it here? A. No, but they are referring to a thin-set here in which you don't have to scratch.

Q. Does this agreement have anything to do with the thin-set? Does it say anything in here about the thin-

set? A. No, the thin-set was not in existence back in 19—what is that, '17?

Q. That's right. A. Yeah.

Q. I know it wasn't.

But this is the conventional method, isn't it? A. That is conventional.

Q. All right. A. And in the conventional method you do have to have a mechanical bond. In other words, that is why we scratch in the [978] plaster. That is why we scratch, you know, the brown coat here. Portland to Portland you have to have a mechanical bond.

Q. With the scratch? A. With the scratch. That is what that scratch is, to furnish a mechanical bond between the two Portland cement applications.

Q. All right.

And is that the reason for the scratching, so that he can put on his final coat? A. So that his finished coat, I mean, final coat or bed setting coat—

Q. Yes. A. —will mechanically bond to the brown coat that has been applied.

Q. All right. That has been deleted here. A. He has been referring, as I see this letter, only to thin-set. I don't think he is referring to conventional.

Q. Do you know of any agreement that the two unions have had on thin-set? A. I know of no agreement other than this.

Q. Other than this. A. In other words, this is exactly like that. I think you are making an issue of this word scratch.

Q. That is one of them. [979] A. As compared to what we refer to as our first coat being scratched, this is referring to the scratching of the brown coat, so that there is a mechanical bond between the two coats of Portland cement plaster.

Q. All right. Then the brown coat is your second coat? A. The brown coat is our second coat.

Q. All right.

And you scratch it so that then the tile setter, when he puts his coat on there will be a mechanical bond? A. When he puts on his Portland cement setting bed coat, which is in normal applications roughly three-eighths of an inch thick, as opposed to a thin-set, which is roughly an eighth of an inch or maybe less, it's a chemical bonding agent as opposed to a mechanical bond that is required.

Q. Now, does it say anything here in this 1917 agreement about what the materials are that the plasterer uses? A. It is agreed that the plasterers shall use only sand and cement in the preparation of the work above stipulated.

Q. Does it say anything about what the tile setters should use? A. I don't see it if it does. Does it say it here somewhere that I don't read?

Q. No, I haven't seen it. A. No.

Q. There is nothing in this 1917 agreement, then, that [980] alludes to the thin-set method? A. Not as far as I can see.

Q. So then this is the thinking of the Joint Board on what the crafts should do; is that correct? A. No, they are interpreting that to a new condition.

Q. To a new condition? A. To a new material, rather than a new condition.

Q. To a new material? A. Uh-huh.

Q. All right.

Then are they changing anything in it? A. I don't think they are.

Q. They have eliminated scratch. A. They eliminated the scratch, word scratch there, because here they were dealing with Portland cement. Here they are dealing with a chemistry bond, a chemical bond..

Q. Now, look over here on this March 15. Do you see any—do you say this is exactly the same as the agreement? A. I haven't noticed a difference. There may be one that I haven't been able to weed out, but I can't see it.

Q. What about this second paragraph here? A. It's

telling him, it's telling the tile journeyman that if he sets his tile the same day he can do this work.

Q. He can't, he cannot do it? A. No, he can.

[981] Q. If he sets it— A. If he sets it the same day.

Q. Is there anything in this 1917 agreement which limits him or tells him when he can set his tile after he puts on his setting bed? A. Not to my knowledge. It may be there. Let me read.

I think this is something that was given to him at some period between 1917 and the present date.

Q. What do you mean given to him? A. As between the two unions as to an agreement to let him do this brown coat work or float coat work or bed setting work, if he covers it up with tile the same day.

Q. Now, you are saying you think this is an agreement between the two unions? A. This is something that at least in this area that is recognized by all of us as being their work if it's covered up the same day. Area practice, I should say. I am not sure what it is nationally. But it's been our area practice to let the tile setter do it all if he is going to—

Q. Well, now—

Mr. Capuano: Let him finish his answer, please.

Q. (By Miss Thacker) Now, you are saying—

Mr. Capuano: No, let him finish his answer.

Q. (By Miss Thacker) You are saying that the tile contractor—

[982] Hearing Officer: Wait a minute.

Q. (By Miss Thacker) —then—

Hearing Officer: Wait a minute.

Read that question back prior. Let him finish his answer.

(Record read.)

A. Cover it up the same day.

Hearing Officer: It's area practice, then, so far as you are concerned, to let the tile setter do the work so long as he covers it up the same day?

The Witness: That is what I conceive our area practice to be.

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[987] Q. (By Miss Thacker) Now, does this mean that he can't put it up if it's dry?

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A. My interpretation of what Bill Cour is saying here is that the tile setter can apply the cementitious materials behind his ceramic tile if he does that cementitious work the same day that he applies the tile. That is my interpretation of his wording.

Q. All right.

Then that means that it's wet, that the setting bed, that it's wet? A. What are you getting at, wet?

Q. What he is putting the tile on. A. I don't think it has any significance as to whether it's wet.

Q. Well, now, if he says he can't do it except the first [988] day, would it be dry after that? A. It would be dry after that and the bond would be lost.

Q. What bond would be lost? A. Well, I don't know—this is his letter, but I do know, and all ceramic tile people and plasterers know that you get a better bond if you go over a second coat the same day.

Q. What is this again, now, the second coat? This is your coat? A. No, I am referring to any type of cementitious material, whether it's done by a cement finisher, a tile setter or a plasterer, that you get a better bond when you go over it, it's more monolithic.

Q. You mean when it's wet? A. When it's wet.

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[989] Q. (By Miss Thacker) Well, you qualified yourself certainly as a plastering contractor and an expert on plaster. Now, then, in your operations where you have got a plasterer involved, and you have put on your brown coat, which is your gypsum coat— A. You are talking to me as a plastering contractor, doing plastering?

Q. Yes, I am talking to you as a plastering contractor, and you have put on your brown coat which has gypsum in it, usually, doesn't it? A. Uh-huh.

Q. Suppose you are doing, then, a picture mold or a ceiling mold or an ornamental mold, can you put your white coat on when your brown coat is wet? A. You are talking now about gypsum plaster?

Q. Yes. A. If I am putting on the finish coat of plaster, gypsum plaster, over gypsum plaster, it is better for me to do it [990] while the brown coat is still wet.

Q. You can do— A. If I am putting on a finish coat that is a hard troweled surface, I should do it after the brown coat is dry, thoroughly dry.

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[992] Q. Now, you know that as a plasterer, don't you, that in this second set of situations, this second set of facts, that you can't put on your white coat when your brown coat is wet and successfully, don't you? A. I know what good practice is, let's put it that way.

Q. Yes. And you know there are certain things that are involved that you can't do it, don't you? A. To get a representative job.

Q. All right.

Do you think somebody else should come in and tell you, Mr. Brueggeman, that you have got to do it when it's wet?

Answer it. A. I have it done every day to me.

Mr. Capuano: He has given you an answer.

Q. (By Miss Thacker) By whom? A. By the general contractor.

Q. What happens then when you do it? A. I follow his instructions.

Q. What kind of a job do you have then? A. I have a good job, but I have to change my operation in doing it, that is all.

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[998] Q. Did you have any representatives at this meeting from the two crafts involved? A. Oh, let's see, I am just trying to think. I don't know for certain. I was here in Houston in the Ben Milam Hotel as part of our committee, made up of lathing and plastering contractors, meeting with a committee from the ceramic tile contractors, and there was a man introduced to us, and I made the minutes of the meeting, I made notes, I didn't copy verbatim word for word, but Mr. Young was intrduced to me as one of the tile setter representatives from Oklahoma. And other than that I don't remember the man. But I do know that the man represented to me, represented himself as being with the tile union and from Oklahoma. Other than that I couldn't—

Q. Did he participate in any of the sessions? A. To my knowledge, no. He was here on other business.

Q. He did not? A. And observed what we were trying to do in Texas.

[999] Q. Then you got together this guide without any real consultation with the two crafts, isn't that right? A. I would say that is correct.

Q. You would say that. A. Yes.

Q. Were you aware of this agreement between the two crafts? A. We used this as a guide. In other words, when we tried to draw up—may I have a copy of that?

Q. Yes, surely. Here it is, P-16. A. To the best of my knowledge we used this green book and area practice and tried to develop a combination of exactly what was going on at the present time. It was not anticipated that we were changing, really, anyone's jurisdiction.

Q. Who were the members of the Tile Contractors on this committee? A. Who? I remember Mr. Love, Mr. Montgomery. I believe Adolph Martini sat in the meeting here in Houston or was there for a while.

Q. Did Mr. Love and Mr. Montgomery have any interest other than as tile contractors? A. I have no idea what their particular interest was.

Q. Are they manufacturers of L.&M.? A. I believe they are tile contractors. I am not positive of this.

[1000] Q. They. had a product to sell, L.&M.? A They didn't have a product to sell to us, no.

Q. But they were on the committee that set up these guide lines, two manufacturers of a bonding agent? A. Yes, they manufactured L.&M. and they were both on the committee sent to us by the Ceramic Tile Association. Why they were picked by them I don't really know.

Q. Do you know if the guide before it was finalized was sent out to all of the members of the Tile Association and approved by the membership? A. Oh, after it was approved by our committee I believe our contractor sent the thing out for perusal by all of our members.

Q. Of your members? A. Yes. Now, what they did on their side of the fence, all I ever knew about it is that later we did receive from them a signed copy and a letter that was thanking us for assistance in the matter.

Q. But you don't know what action was taken— A. No, I don't know.

Q. —in their association? A. No, I don't know.

Q. Now, Mr. Brueggeman, I believe you said that in connection with this area practice that you state in the tile, in connection with the tile installation, your source of [1001] information was your own men, is that what you said? A. Our source of information was our committee as set up by the Texas Lathing and Plastering Association. We picked, as I recall, a man from the Valley, a man from Beaumont.

Q. Of your own association? A. Of our own association.

Q. Then you don't have any direct knowledge of the practice in the tile industry from tile contractors? A. Do I personally or—

Q. Yes. A. No, sir.

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[1002] Q. Can you tell me what any tile contractor has told you what his practice is? A. The people who sat down with us in this meeting told us. Were in agreement as to what the practice in the area was.

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Q. But you haven't had this information of what area practice is given you by any particular tile contractor that [1003] you can name? A. Well, the people who sat in on the meetings—

Q. They were manufacturers, you told me.

Mr. Capuano: Now, that is not accurate of his testimony.

A. Two manufacturers.

Q. (By Miss Thacker) Yes. A. Two of them. Well, actually they are tile contractors, to my knowledge.

Q. Yes. A. They represented themselves, that is what they represented themselves as being, now. Other than that I didn't go up to their place of business and actually go and look at their jobs. They said to me, "I am a tile contractor," and from what I knew of them they were tile contractors. They also manufacture, two of them did, materials used in tile application.

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[1007] Redirect Examination

Q. (By Mr. Capuano) Could you tell me, Mr. Brueggeman, whether, since this agreement, specification, guide specification, P-16, has been in existence, whether it has in fact been followed at least in the Houston area here by architects? A. Well, all the architects in Houston were given one or more copies of this as a guide, and I would assume that they are using it because most of the specifications adhere very closely to the way this is set up.

Q. Thank you.

Now, in the thin-set method or when one of these dry-set mortars is going to be used in the thin-set method, does your brown coat have to be plumb? [1008] A. On the thin-set?

Q. Yes. A. It has to be plumb, yes.

Q. And it had to be plumb in the conventional method, right? A. Right.

Q. And what does plumb mean? A. It has to be flush up and down.

Q. Straight, in other words? A. Straight.

Q. And level means horizontal, is that right? A. Yes.

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[1009] Q. Now, let me ask you this. On, for example, metal lath, when tile is going to be installed in a thick mortar coat, you will put on a scratch coat and a brown coat, correct? A. Yes.

Q. Then the tile setter will put on the thick mortar coat, is that correct? A. Yes.

Q. And what is that called? A. To me it's a setting bed.

Q. All right.

Now, the thin-set method has come in, right? A. Uh-huh.

Q. And take the same situation, over metal lath you will put on a scratch coat and a brown coat, correct? A. Yes.

Q. And then the tile layer will put on another coat and then his tile, correct? A. He will put on the chemical bonding agent or whatever you want to call it.

Q. What would that be called, the coat he puts on? A. It's the setting bed.

Q. The coat he puts on? A. Yes.

Q. Now, on the thin-set method over concrete walls or masonry of some sort, you would put just a brown coat, is [1010] that correct? A. Just a brown coat.

Q. And then the tile layer would apply one of the thin-set mortars and his tile, is that correct? A. Yes.

Mr. Capuano: I don't have anything else.

Recross Examination

Q. (By Miss Thacker) Did I understand you just now, Mr. Brueggeman, to call the bonding agent the set-

ting bed for the tile? A. Well, as far as my recollection of what we are doing, and again over metal lath, we apply a scratch coat. The next thing we apply is a brown coat. Then there's two ways of adhering to our brown coat, that is, either with conventional set, which requires Portland cement to bond, and to bond to our brown coat, or a chemical, such as L.&M. thin-set or whatever the material might be called, also serves the same purpose as that Portland cement setting bed, so it would be a setting bed.

Q. What is the source of your information that the bonding agent and the float coat put in by the tile setter is one and the same? A. They are not one and the same because they are different materials, but we have two coats that we do, the scratch and the brown. The tile setter either puts on Portland cement, [1011] which you could call a setting coat, or he puts on a chemical bonding agent, which could also be called the setting bed, in other words, that is what sets the tile to the brown coat. That is the terminology I am using.

Q. Do you know any tile contractors or tile setters that call the bonding agent a setting bed?

Mr. Capuano: Now, I am going to object to that. I can't possibly see the relevancy of that, whether they do or they don't call it that. She asked him his opinion and he told her.

Hearing Officer: I will overrule your objection. If he knows he can answer.

A. What was the question again? I didn't quite follow it.

Q. (By Miss Thacker) Have you ever heard any tile contractors or tile setters call the bonding agent the setting bed for the tile? A. No, I haven't.

Q. Where did you get the term, then, or why do you call the bonding agent the setting bed? A. Well, because the two are serving the same purpose. They are both bonding tile to our brown coat.

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[1013] Q. Now, you put on your brown coat. The tile setter puts on his float coat or his setting bed. Does he put the tile directly onto that? A. If he is in the conventional set, when we finish our brown coat, he then puts on, in conventional set, about three-eights of cementitious material, Portland cement, or masonry cement, and he applies his tile to that.

Q. Without any bonding agent? A. He is not using a chemical bonding agent. That to me is the bonding agent.

Q. All right. This is the conventional method? A. Conventional, yes.

Q. All right.

[1014] Now, then, in the thin-set you are calling the bonding agent the setting bed, is that correct? A. It's serving the same purpose as that three-eighths inch Portland cement.

Q. In your opinion? A. In my opinion.

Q. Now, I believe you said that in area practice that the architect's specs. primarily had the bids going to the plastering contractors for the brown coat on thin-set. Is that your statement? A. That is my statement.

Q. Do you see all of the architects' specs. that's made in this area? A. I see every bit that we make as we make it, and before we make it, and in all cases where they are in our specs., where the brown coat, and I am using our terminology, is in our specifications, we bid it.

Q. Yes. A. Now, when we find that it is not there, we go looking for it, and if we find it in the ceramic tile specifications, we bid it as the specifications say, our base bid is x number of dollars, but you have the brown coat in the ceramic tile specifications. We think that the plasterer will have to do it, and such being the case, if you want us to contract for it, add x number of dollars to our base bid.

Now, I don't look at the specifications, but I would [1015] say that at least ninety-five per cent of the time it's in our base bid.

Q. Of the ones that you see? A. Of the ones, of the jobs that I bid.

Q. But you don't see all of them in the area? A. We have three estimators that cover about ninety per cent of the work that is done in the plastering business. In other words, if there is ceramic tile in a job that involves plaster, then we see ninety per cent of them.

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[1016] Q. I see.

Will the tile go on, Mr. Brueggeman, if the bonding agent isn't put on or if it isn't buttered? A. I don't know.

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[1017] MARION LINDER SAYLORS

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Capuano) Mr. Saylors, could you tell me who your employer is, please? A. Mr. K. F. Doerner.

Q. Is that the Doerner Plastering Company? A. Doerner Plastering Company.

Q. And what is your position with Mr. Doerner? A. I am Mr. Doerner's superintendent, field superintendent.

Q. All right.

And are you a plasterer by trade? A. Yes, I am.

Q. And how many years have you been in the business? [1018] A. Approximately nineteen years.

Q. O.K.

Now, in connection with your work as a superintendent do you regularly visit jobs that Doerner is working on? A. Every day.

Q. Every day. All right.

Now, have you had under your supervision jobs where walls have been prepared to receive tile? A. Almost every day.

Q. All right.

Now, could you tell me the name of some of the jobs that you have been on which have included the preparation of walls to receive tile, particularly with Portland cement first? If you have got jobs where gypsum was used, just distinguish them for me. A. Well, most of mine is with cementitious material.

Q. Portland? A. Portland cement, yes. And we or I had supervision over the St. Anthony Home for the Aged, the Diagnostic Clinic.

Q. Is that all one job? A. No, there's two jobs.

Q. All right. Let's take the St. Anthony job. When was that, approximately? A. Oh, we finished it up six to eight months ago.

Q. All right. Was that in the Houston area here? [1019] A. Yes, it is.

Q. And what did you do on that job, the plasterers, I mean? A. Scratched and browned.

Q. And tile was installed over that? A. Tile was installed.

Q. And do you know how tile was installed over that? A. On a setting bed.

Q. All right.

Do you know what type of setting bed was used there? A. Oh, I am not, the trade name I am not sure of. It was one of the bond, the setting bed materials that they use now.

Q. These thin-set? A. Yes, thin-set, L.&M., Crest, Kaiser, one of the trade names.

Q. I see. A. I don't know specifically which one was used to install the tile.

Q. All right.

Now, and you say the plasterers did the scratching and browning there? A. Yes, they did.

Q. Where did you have this wall preparation, in other words, what areas of the— A. Well, in all of the bath areas, and there was one to almost every room, and the morgue and wherever tile was used.

[1020] Q. All right. A. In the kitchen area, a tremendous amount in the kitchen area.

Q. O.K.

Now, your brown coat, let me ask you this, in relation to the time or the date you put your brown coat on, when did the tile setters apply their setting bed and tile? A. Well, they started about three months after we got the first one browned.

Q. O.K. What was the other job you mentioned? A. The Diagnostic Clinic.

Q. Where is that? A. That is on Main.

Q. Here in Houston? A. Yes.

Q. When was that job, approximately? A. Well, along about the same time, somewhere, give or take a month or two, about six months ago.

Q. All right.

And was the type of installation basically the same as you just described? A. Basically the same, yes, sir, in regards to what the plasterer did it was the same.

Q. It was the same? A. It was the same.

[1021] Q. Was tile installed then with one of the thin-set materials? A. Yes, same day.

Q. All right.

Can you think of another job? A. Rice Kitchen.

Q. Rice Kitchen? What is that? A. A kitchen for Rice Institute, which was—

Q. Was this— A. A very large tile job.

Q. Was that a separate building, this kitchen? A. Yes, it's a building in itself.

Q. All right.

And it was a large tile job there, you say? A. A large tile job.

Q. And what preparation did your plasterers do on that job? A. We scratched and put the brown coat up plumb, square and true.

Q. And then the tile setters applied their tile? A. Then the tile setters come in some weeks after we had started and put their tile in.

Q. With the thin-set again? A. Yes.

Q. All right. Can you think of another job? A. Savoy-Field.

[1022] Q. That is a hotel? A. That is a hotel.

Q. Approximately when was that? A. Oh, about four months ago I think we completed that.

Q. And could you tell me, was that installation similar— A. The installation was the same.

Q. O.K.

If you can remember the name of the tile contractor on any of these jobs I would appreciate your mentioning it. A. Mr. Martini on the Casa de Maria, which is the St. Anthony. Mr. Martini on the Diagnostic Clinic. I am pretty sure it was Mr. Martini on the Rice Kitchen.

Q. O.K. Any other jobs you can think of offhand? A. Oh, yes, we have got four or five going presently. We have got NASA Building No. 37. We have Foley's.

Q. All right. Let's take NASA Building now. Is the installation there the same or— A. It's yes, we are scratching what metal lath is there, and then we are browning all of it in its entirety, and the tile setters are coming with their bed coat, putting it direct. It's thin-set method bed coat.

Q. And what is this, Foley's, you say, now? A. Foley's.

Q. What is that job? A. Now, the tile setter hasn't started. I have browned about [1023] half of the bathrooms but the tile setter hasn't started yet.

Q. All right.

Same method of installation? A. Same method of installation. We are waiting for the bricklayer to complete his work at the present time.

Q. Then they are going to put their tile directly over your brown coat with this thin-set method? A. That's correct.

Q. And what is another job? A. The University of Houston Engineering Building which we finished up to the last month or two.

Q. Is that the same method? A. Same installation.

Q. And do you recall the tile contractor on that job? A. Which one was it?

Q. The Engineering Building. A. Engineering Building? Martini.

Q. O.K. Can you think of another job? A. Texas Southern University.

Q. What did you do there? A. Scratch and brown, plumb coats, for the tile setter.

Q. And was that a particular building at Texas Southern? A. It's the Library Building addition.

Q. O.K. When was that job, approximately? [1024] A. A year, maybe.

Q. Same thing, the tile was going to be installed thin-set? A. Right.

Q. Can you think of another job? How about Luby's Cafeteria? A. Yes, Luby's Cateteria.

Q. And is that here in Houston, too? A. That is here in Houston.

Q. Was that about 1965? A. Somewhere around there, yes, sir.

Q. And was that installation the same as— A. Same basic installation.

Q. How about Methodist Hospital, do you remember that? A. Yes. That was a rather large tile job that we did. I am not certain. I believe it was Martini on that job, too. I am not certain. I couldn't—

Q. Well, that is all right. Was that in about 1965, too, here in Houston? A. Yes.

Q. Pardon me? A. Yes.

Q. Did you perform the same work as you described? A. The same work, put the plumb and scratch coat up for the tile.

Q. O.K.

How about the Olson Building, do you remember that? [1025] A. The Olson Building, yes.

Q. Is that here in Houston? A. Yes, it is.

Q. Where did you have the back-up for tile then? A. In the bathroom areas.

Q. O.K. Is that an office building? A. Office building over on Kirby.

Q. Approximately when was that? A. That's about a year or so ago.

Q. O.K. And the method of installation? A. Scratch and brown for the tile setter.

Q. On some of these jobs did you have wire lath in all of them? A. No, I am sorry, did you want me to identify the fact that they did have metal lath or whether they were on masonry or what? Some of them—pardon me.

Q. That is all right, go ahead. A. When you have masonry you also most generally have chases and things that you have to furr with metal lath, which you could have a combination of both in all of these instances.

Q. All right, sir. A. Quite a number of them have spe-specifically metal lath.

Q. So, in other words, you would have how many coats, if you had masonry, how many coats would you have? A. Well, one coat, one plumb coat.

[1026] Q. I see. Then two on the metal lath, is that what you are saying? A. That's right.

Q. O.K. How about Pittsburgh Plate Glass, do you recall that? A. Yes, that is—

Q. Is that in Houston, too? A. Yes.

Q. What was that, an office building? A. No, it's an addition to their—well, yes, I am sorry, it is, it's an addition to their office building.

Q. Approximately when was that job? A. Oh, about six months ago.

Q. All right.

And the same type of installation that we have described? A. Same type of installation.

Q. Do you recall who was on that job, the tile contractor? A. No, we had cleaned up and left the job, I think, before the tile contractor ever got there.

Q. O.K.

How about Rohm & Haas Chemical Company, do you recall that one? A. Uh-huh, that was a job down on the Ship Channel that we did.

Q. Is that here in Houston, too? [1027] A. Well, in this area.

Q. O.K. And approximately when was that? A. Two years ago, possibly, something like that.

Q. Same type of installation? A. Same type of installation.

Q. How about St. Thomas Biology Building, do you recall that? A. Yes, uh-huh, that was on masonry, I remember that, that was at the University of St. Thomas.

Q. Is that in this area, too? A. In this area.

Q. Approximately when was that? A. About a year and a half.

Q. How about Texaco Office Building? Oh, excuse me.

How about A & M College? A. Uh-huh, we just, oh, about six months ago completed that.

Q. And is that in this area, too? A. Well, yes, that is at Bryan and College Station, about ninety miles from here.

Q. Oh, is that within the jurisdiction, do you know— A. It's within this jurisdiction.

Q. O.K. Same type of installation there, too? A. Same type of installation there.

Q. How about the Humble Research Addition? [1028] A. Yes, that is at the Humble Research Lab, and it was the same installation.

Q. And is that in this area, too? A. Yes, it is.

Q. And approximately when was that job? A. About a year.

Q. And on all these jobs the plasterers did this browning? A. The plasterers did the preparatory work for the tile.

Q. All right.

These are jobs you have done for Doerner? A. Yes, for Mr. Doerner.

Q. How about the Center Pavilion? A. Yes, that is a remodel job that we did that was about four or five floors, and we had to do the scratch and brown for the tile there.

Q. And when was that approximately? A. Well, we did two different jobs for them. One of them we finished about four months ago. The one prior to that we did about a year or so ago.

Q. Same type of installation? A. Same thing, yes.

Q. How about Humble Service Center, H.L.&P.? A. Yes, that is at Tumble, Texas, in this area.

Q. It's what? A. It's at Humble, Texas. It's Houston Power and Light [1029] Company auxiliary building, and we lathed, scratched and plumbed for the tile setter, brown coat and plumb for the tile setter.

Q. Is that within 79's jurisdiction, too? A. Yes, uh-huh.

Q. How about the Houston Club? A. Yes.

Q. What was that job? A. It was remodel of the eighth, nineth and tenth floors.

Q. And when was that, approximately? A. It's kind of finishing up now. We have got a little more work to do down there.

Q. Do you recall who the tile contractor was on that? A. No, I really don't, to be truthful.

Q. Can you recall any other jobs where you did the backup for tile other than when you were employed by Doerner? A. That is calling on my memory pretty good, but I was with Mr. Duckett for, associated with him for about seven years, and we did First City National.

Q. What is that, an office building? A. And schools. I beg your pardon?

Q. Is that an office building, First City National? A. Yes, it's an office building.

Q. Here in Houston? A. Uh-huh.

[1030] Q. What type of installation did you have there of the tile? A. Well, basically all these things I am tell-

ing you were where we scratched and browned preparatory for tile.

Q. All right. Tell me, can you think of any other job by name while you were working for him? A. There were so many of them, you know what I mean, after so long a time they just run together. I mean —

Q. You have had others, though? A. Oh, yes, the Towers, Bank of the Southwest Towers, repair work over at Memorial Professional Building.

Q. Both of those were the same type of preparation, too? A. That's right. School jobs, you know, the names, I know the locations and everything, but as far as putting a name to them I can't.

Q. That is all right. I understand. O.K. A. Oh, a couple of Spring Branch High Schools. This is when I was with Mr. Duckett.

Q. O.K.

Now, have you during your nineteen years experience, have you ever seen tile setters apply a mortar setting bed in the conventional method? A. Yes.

Q. And how thick would they normally apply the mortar setting bed in the conventional method? [1031] A. Normally, I would say, about three-quarters of an inch, sometimes. I mean, if you are talking about they are doing it conventionally, is this what you are saying?

Q. Yes, conventionally. A. They do it about three-quarters of an inch, whatever it takes when they strip it out and set it.

Q. And you, of course, have seen your plasterers install your brown coat, is that correct? A. Yes, that's right.

Q. Now, could you from your experience give me your opinion of the comparative skills of the two crafts in the installation of the mortar coat, that is, the plasterer's brown coat and the tile setter's conventional setting bed. A. The two skills between the two crafts?

Q. If one craft is better than the other or— A. Well, we are not confined with just using a level and a square

in a bathroom. We have to use it on jobs in other places, cabinets and so forth and so on, where they are going to have cabinets installed later. Our men use a hawk and trowel eight hours a day.

Q. You are talking about plasterers? A. Plasterers. When I say our men I am talking about plasterers. And I think just the fact that they use the tools more would make them some little bit more proficient with the use of the hawk and trowel and possibly a level [1032] and a square.

Q. All right.

How about with regard to the speed or the amount that can be covered in— A. I believe because of the continued use of tools plasterers just can get over it faster and do just as good a job. I mean, they are used to handling mortar all day long, not handling mortar for, say, two or three hours and then stopping and setting tile for the rest of the day. Elimination would just almost declare that to be a fact.

Q. Now, on the jobs where you have been the superintendent have any officials of the tile layers union or any members of that union ever claimed from you the installation of your brown of mortar? A. No, they haven't.

Q. Now, could you give me the method in which, describe for me how your plasterers would install a brown coat of mortar on, say, a masonry wall? A. You are talking about in relation to setting tile on it, preparatory to setting tile or just—

Q. Yes. A. Well, we will assume, then, it's possibly in a bathroom. Well, there are several factors to be taken into consideration when you go to setting or browning for a tile setter. The plumber has got certain receptacles, pipes and so on, [1033] and so forth, that are protruding from the wall, and he has to have a fixed location for the setting of his plumbing fixtures at a later time, after the tile is installed. So we have to acquaint ourselves with what his needs are, the reveals that are going to be on the door bucks, we have to

acquaint ourselves with that. We have to acquaint ourselves primarily, or first, I should say, with the thickness of the tile, what is going to be the requirements as far as the tile setter is concerned, how much is he going to have to have for the total thickness of his setting bed and his tile, and the dimensions of the tile, and then we go in there with this information, we go in there and lay our screeds out and fill them in, rod it, level, square it, just check it from every aspect.

Q. All right.

Now, when you go in to do this, are these pipes that you talked about already installed? A. Yes, we run into trouble sometimes when—I have lathers under my supervision sometimes, and when we go to a job everything that is on the print isn't exactly in the same relation, somebody could have had a larger pipe, maybe, or location was changed, and we have to work back from there.

Q. How about door bucks, would they be installed when you started installing the plaster? A. The door bucks could or could not be, but this door buck [1934] is generally set by the general contractor, and he is charged with the responsibility of the location of the door buck.

Q. How about things like window frames, would they be set when you started? A. Well, they, yes, they could be set when we start or a lot of times our tolerances are such that we have to work and then you just slip a prefabricated window into place. With everything with of-the-job fabrication, different things occur at different times. In our business nowhere is there just a set rule now that a person can go by because they have to adopt theirself to every job.

Q. You say prefabricated windows that they slip into place. What do you mean by that? A. Well, there's a lot of time that the plastering work is complete and they will just set a whole unit in and tie it in and calk it.

Q. Well, will you have to know whether it's going to be prefabricated when installed, when you are putting up your work? A. Yes, you would have to know that. You

would have to make an allowance for them to just put the window right in place.

Q. I see.

Are there any other prefrabricated products? [1035] A. Cabinets, they make these cabinets, they have got fixed dimensions on marble tops. They have to just fit right in place. These things are mostly made by cabinet shops completely off of the job and are brought in truckloads and then set on the job to be put in place.

Q. Then they have to be set right in the wall? A. Right in the wall, and they have to fit.

Q. All right.

And when you are installing your brown coat, then, do you take these things into consideration? A. These things all have to be taken into consideration. In the event that there is something wrong on the job, if there is a chase out, then you have to go to the job superintendent, talk it over with him, maybe he will even go to the architect, get the information from him to move these walls, to take all this into consideration before you can do your preparatory work for the tile.

Q. When you go on a job are there any room dimensions that you must meet besides this prefabrication business we talked about? A. Yes, there's room dimensions given on most all of your architectural plans.

Q. And what do they disclose, those room prints? A. Well, in the toilets you will have toilet partitions. You will have towel holders. All these dimesions have to be [1036] worked with. They have to be taken into consideration.

Q. You mean the architect will tell you where these things will be? A. Well, he has got them drawn on his print. Now, if there is a conflict in what you find and what he has got drawn, then you will need further counseling on it. Other than that you comply with what is on the print.

Q. Now, in connection with your work preparatory to the installation of tile do you confer with any other crafts

or contractors? A. Oh, yes, we work, we work with all the crafts on the job. In our particular trade we are more or less starting the second phase of a job when we get on the job insomuch as we are starting to put the first finish work in. We are covering up the mechanical contractor. We are covering up and working with the electrical contractor. We are working with the tile setter. We are working with just everybody.

We start to tie a building together, so to speak, after the framework is up, and the mechanical is in, we start to put the finishing touches on it.

This necessitates close cooperation between everybody because actually our finish work is part of what they see, what they sell.

Q. Now, in connection with your position as superintendent [1037] have you received any complaints from tile contractors about the workmanship of our men? A. You mean has a contractor called my attention off the job or made a call to my office that this work wasn't up to par or something like that?

Q. Yes. A. No, never have I had a call come to the office where I was at with that to me, or even one of my employers. Now, there could have been a possibility on the job, there was a pipe out and we had to build a wall out or something, or there was a slight imperfection and the tile setter or somebody could have come and asked us to fit it, and we would do that on the job. Then I wouldn't probably know about the imperfection or something in the wall that could be corrected in, say, five or ten minutes, I wouldn't be, maybe, aware of it.

Q. Is that a typical job condition? A. Typical job condition?

Q. Well, what I mean is this a job circumstance that you run into on jobs? A. Well, yes, I think more than anything else.

Q. You have this with other trades besides the tile setters? A. You have this with anybody in the construction business. I mean, everybody has got tolerances that

they have to work within. I mean, I don't think any of the men under my [1038] supervision have ever told anybody that if there is a slight imperfection that they wouldn't be more than glad to take care of it immediately, not put anything off, lengthening it for a period of time.

Q. And do other crafts have to make corrections for your plasterers? A. Most assuredly. An electrician or anybody could put the wrong light ring on and he would have to come out and tear a hole. The plumber could have his plumbing wrong and have to come tear a whole wall off or part of a wall, to move it. This happens, has happened to everybody. People in the construction industry accept this.

Q. Now, could you give me a couple of examples of where plasterers must work to close tolerance other than, say, behind tile? A. Well, anywhere they are going to have a cabinet brought in on the job that is square.

Q. This prefabricated business were were talking about? A. Prefabricated, off the job, maybe San Antonio, Dallas or some other cabinet shop, and they are going to bring it down there, they may have three hundred fifty of them that are going to go in a hospital job, and they are going to set it in a corner. Then you have got close tolerances. Ornamental work you have got close tolerances.

Q. Ornamental plaster work, you mean? [1039] A. Ornamental plaster work.

Q. How about ceilings with modulated tiles? A. And corridors of buildings, the architect could call for full tile and then you have to work to that full tile.

Q. You mean the ceiling? A. Uh-huh, in the ceiling.

Q. And how do you work to that full time, in other words, how do you get your work so that it will fit full tile? A. By leveling it and rodding it, plumbing it.

Q. Squaring the rooms? A. Yes, squaring it. You have got to know his dimensions and work back from his dimensions.

Q. Now, take a typical office building job. Would you have gypsum plaster on top of tile wainscoting? A. Yes, you could have, or you could even have a gypsum ceiling over that. You could have various means, you know, they could be gyp four feet on up to eight feet six inches high and then plaster ceiling in the room.

Q. Well, let's take the situation, do you ever have anywhere you are putting Portland cement to be covered with a tile wainscoting and then gypsum wall? A. Yes, I don't have presently, but I have had numerous ones in the past.

Q. All right.

Well, give me your mode of operation in how your men [1040] would perform their various tasks in that job, in that type of installation. A. We like to go in, naturally, and scratch it, and then we will brown it.

Q. What part would you scratch? A. Well, we would scratch it with Portland cement up to the wainscot line. Then we would scratch from there. And if the ceiling was plastered we would scratch that. If it called for gypsum we would scratch it with gypsum. Then we would go back and brown the tile work first. We would square the room and brown and plumb for the tile work. And then he would immediately go on up, if it would allow us to, if the mechanical and everybody was in, brown the wainscot on up, brown the ceiling, and the most practical way for everybody involved, then, is to finish it and clean it up and get your scaffold out. Then when the tile setter comes in we are not forced to work behind him, and he is not forced to work behind us.

When you move scaffolding over tile work or something like that, there is a chance that it could be chipped or cracked, and then you have got a hassle on the job.

Q. You say when you would finish yours. What do you mean by finish yours? A. Well, we would put the finish coat on. I mean, we would brown it and finish it and put the finish coat on, and [1041] then the tile setter could

come right in and put his setting bed on there and go about his business.

Q. Well, you see, the record doesn't know what you mean by a finish coat. You are talking about a finish coat of gypsum? A. Finish coat of plaster, sand coat, white coat, sand plaster, whatever the specifications call for.

Q. That is above the wainscoting? A. That is above the wainscoting.

Hearing Office: I guess this area above the wainscoting, now, is not to receive tile, is that it?

The Witness: No, sir, I am sorry, we are saying, he said gypsum plaster. I am assuming, then, that there would be no tile on that. It would be a white coat finish or textured finish or sand finish, various means.

If we can do this above the wainscot, then, and finish it out, then the tile setter is free to come in there. As soon as he is free, done his work, then the plumber can come in and get on it and finish the job up.

Q. (By Mr. Capuano) Now, perhaps we better clarify it. By wainscoting what do you mean? A. Well, four, five, six foot wainscot, and then from that point up to the ceiling line.

Q. You would have gypsum plaster? A. Any thing below that is, the terminology is wainscot.

[1042] Q. I see. And below that would be the tile and above that would be the gypsum plaster finish? A. Would be plaster, yes.

Q. Now, could you tell me in connection with your job as superintendent what percentage of the jobs that you do in a year include doing the brown coat or back-up for the installation of tile in the thin-set method? Do you understand the question? A. Yes, I believe I do. I am just trying to run it over in my mind and see. Oh, the ones that I am involved in I would say about eighty-five per cent of them.

Q. O.K.

Now, could you also tell me from your experience what percentage of jobs done in this area on the back-up for tile, that is, the installation of the mortar coat, where the tile is done, or where the tile is installed after your mortar coat is dried, in the thin-set method, what percentage of these jobs do the plasterers do, install the mortar coat? Do you follow me? A. What percentage of the jobs in the area or—

Q. Yes, in this area, from your experience. A. Isn't that the question I just answered a minute ago?

Q. No, I asked you what percentage of your jobs include back-up for tile. Now I am asking you— A. Oh, I beg your pardon, I misunderstood the first one. [1043] The ones that include back-up for tile.

Q. Well, let's go back to that. A. The first one, I would like to ge the first one.

Q. All right. What percentage of the jobs—say you do a hundred jobs in a year. A. Yes.

Q. What percentage of those hundred jobs would include some back-up for tile? A. Oh, some back-up for tile. Well, not all of them do.

Q. Well, give me a percentage. A. It has to be about, maybe, ninety per cent, ninety-five per cent.

Q. All right.

Now, taking your experience in this area, working for Doerner and the other people, what percentage of all the jobs that you know of where a mortar coat is installed, tile is going to be put on with a thin-set method, what proportion of the work, the installation of that mortar coat, is done by plasterers in this area? A. About eighty-five per cent.

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[1047] Cross Examination

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[1051] Q. Are there more, as far as you know—now, you have said you are not an expert on tile setting. As far as you know, would there be some more demands on a

preparation for a wall or a ceiling to receive tile than for this type of a finish? A. Yeah, there's certain demands on this wall. This wall has to be pretty straight. It's going to get tile on it, accoustical tile up against it. It's going to get, maybe when they did this wall there could have been a cabinet was [1052] going to be in there, there has to be a certain amount of thought go into this wall. They can't just slap it up there.

Q. But my question is is it the same amount, as far as you know, in the installation of tile, do you think that this wall, for you to put a finished plaster coat on this wall, do you think that would take no more than it would for a wall that was going to receive tile? A. No, because of the fact we have so many close dimensions in the bathroom and so many things to work with, it is going to necessitate some more time.

Q. For the tile installation, you are saying? A. Yes, sir.

Q. All right. A. Because of the plumbing fixtures and things going in there.

Q. What about the courses of the tile, to have the joints straight and all that sort of thing? A. The course of the tile would be up to the tile setter.

Q. Well, I know that it is, but I am talking about the foundation getting ready for the tile setter. A. We just have to plumb it and square it, rod it true.

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[1056] Q. Isn't generally the plasterers gone off of the job when the tile setter comes in? A. Not all the time, no, ma'am.

Q. Don't you, the different crafts, generally work with each other, that one finishes up before the other one comes in, on a given area, now? A. In an area?

Q. Yes. A. Yes, but I have always made it a point to go check with the tile contractors and see if everything was progressing satisfactorily.

Q. Now, when you put on your brown coat and you know there is going to be a thin-set, do you go get the

specs. of the tile contractor and know what size his tile is going [1057] to be and the thickness of it? A. Yes, ma'am, we check generally with the job superintendent and see if he has got that information. If he doesn't then he will contact the architect and relay the information. In the event the tile setter hasn't a superintendent, which most of these contractors in town have superintendents, like Mr. Doerner, then we confer on the job, and we know what the thickness of the job, of the tile is going to be. It's mandatory that you know.

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[1059] Q. Oh, I see. All right.

If you were going to square up a room what opening do you start from? A. What opening?

Q. Uh-huh. A. Oh, I think there is more to be taken into consideration than just an opening. I think you have first got to find out something about what the plumber is going to require.

Q. Well, now, this particular question I have in mind is just without any plumbing involved. Say in a corridor. A. If I were going to brown for the tile setter in the corridor?

Q. Yes. A. I would go to the prints and I would find out what margin was required by the architect on the door bucks.

Q. Yes. A. Then I would work from there.

Q. Do you know in advance how much his space, how much space he is going to have? A. Yes, ma'am, he generally has it on his door schedule, on the prints.

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[1061] ROBERT EUGENE UNDERHILL

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

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Q. (By Mr. Capuano) Mr. Underhill, are you a plastering contractor? A. Yes, sir.

Q. And what is the name of your company? A. Gulf Plastering.

[1062] Q. And how long have you been in business? A. Since 1957.

Q. Are you a plasterer by trade, too? A. No, sir.

Q. Now, in connection with your business has your company prepared walls with Portland cement to receive tile? A. Yes, sir.

Q. And have you prepared them for installation in the conventional method and the thin-set? A. Yes, sir. However, most of it is for the thin-set.

Q. Thin-set. O.K.

Now, can you give me from your recollection the names of some of the jobs, give me the name of one, as a starter. A. Well, two Spring Branch junior high schools.

Q. And where were those jobs? A. In Spring Branch. One on Westwood. One was the Westwood School. One was the Meadowood School.

Q. Is that in the Houston area? A. Yes, sir.

Q. Could you tell me approximately when that was? A. We finished in January of this year, I believe.

Q. All right.

And could you tell me what type of installation your men did on those jobs? A. We browned different small areas for the tile setters. [1063] There wasn't much tile on the job. We browned recesses for drinking fountains over masonry in most cases and some round columns in the kitchen and some kitchen walls and most of the bathrooms were glazed tile.

Q. All right.

Now, you say you browned over masonry and then the tile setter put his tile on that, is that the idea? A. Yes, sir, he used his setting bed and stuck his tile to it.

Q. Do you know what type of material he used as his setting bed? A. It was a thin-set material. I don't know what name brand it was.

Q. All right.

Could you tell me who the tile contractor was, do you recall? A. No, sir, I don't.

Q. All right.

Can you tell me another job you did? How about the Northeast Baptist Hospital, do you recall that? A. Yes, sir. This was some time ago.

Q. About 1962? A. Yes, sir.

Q. And is that here in Houston? A. Yes, sir.

[1064] Q. And could you tell me what type of work you had there? A. We had all the walls and all of the ceilings and partitions throughout the complete building.

Q. How about for back-up for tile? A. Yes, sir, all of that also, in every bathroom which there was approximately two hundred, and down every hallway, which there was four major hallways over two hundred feet long, and several minor hallways a hundred to maybe sixty feet long.

Q. Was that Portland cement behind the tile? A. In most cases, all wet areas. The hallway, however, was in most cases gypsum plaster except where they were adjacent to a bathroom, the bathrooms backed up to the hallways.

Q. I see. Then you put Portland? A. We put Portland cement in all the bathrooms and all of the kitchen area was also tile completely to the ceiling.

Q. All right. And how many coats did you put behind the tile? A. These were two inch solid walls in most cases which require, they are similar to this type of wall, six coats of plaster, counting both sides. Actually there was a scratch coat and a brown coat on the hallway side, which received tile in the thin-set method over this.

Q. All right.

[1065] And your plasterers did the work you just described? A. Yes, sir.

Q. How about do you recall the tile contractor on that job? A. No, sir, I don't believe he was a member of any

of the associations, and I don't believe he was continuously in the tile business.

Q. O.K.

How about the Northwest Baptist Hospital, do you recall that one? A. Yes, sir, it was the same architect, same general contractor and owner, and the same method in all phases.

Q. And was that more recent than the other one? A. Yes, sir.

Q. When was that one? A. This is the Northwest?

Q. Yes, sir. A. This was finished approximately fifteen or sixteen months ago.

Q. Do you recall the tile contractor there? A. No, sir.

Q. How about Southwest Baptist Hospital, do you recall that job? A. Yes, sir, that was in 1963.

Q. Was the method of installation the same or different from the above, from the above jobs? [1066] A. It was the same.

Q. The same.

Did you have tile basically in the same areas, bathrooms, and so forth? A. Basically. There was one exception on this Northwest Hospital, I believe it was, that the exception being that the general contractor and owner, together, wanted vinyl down the hallways, but they did tile every bathroom.

How about the Golden Age Nursing Home? A. This was by the same people that built the hospitals and it was essentially the same except there was no tile in the bathrooms.

Q. Was this five jobs? A. Yes, it was five of them, complete.

Q. Where was the tile on those jobs? A. In the bathrooms and kitchen areas.

Q. Oh, there was tile in the bathrooms there? A. Yes.

Q. Same type of installation you just described? A. Same type.

Q. Did you have any, on any of these jobs, tile or your brown coat over masonry instead of lath and scratch coat?

A. If a masonry wall happened to be one of the walls in a bathroom or kitchen, it was then plastered one coat over.

[1067] O.K.

How about the Shadow Oaks School? A. This was another job similar to the same, it was all two and a half inch solid partitions with cement, scratched and browned in all the bathrooms.

Q. All right.

Tile put on the thin-set method? A. Yes, sir.

Q. Do you recall the tile contractor? A. No, sir, I don't. That one was a long time ago.

Q. That was about 1959, was it? A. Yes, sir.

Q. How about the Willow— A. Willowmeadows Baptist Church?

Q. Right. A. This job is just being finished at this time. I have men on it today. There is not a lot of tile on it. There is some of this little mosaic tile on the exterior of the building which we lathed it, scratched it and browned it for this tile and furnished a scaffold for the tile setters.

Q. Do you recall who he is? A. No, sir, I have no contact with him personally. We just left our scaffolds there at his convenience because we had some cleaning to do and he completed the job very fast, I think about two days is all he was there.

[1068] Q. Did he ask you to leave the scaffold there? A. No, the general contractor did as a matter of convenience. We were trading out a scaffold. It was approximately some sixty feet in the air.

Q. O.K. We have covered the Spring Branch Schools, haven't we? A. Yes, sir.

Q. How about the Methodist Hospital in Houston? A. That would be the ninth story addition to it.

Q. Yes, that's right. A. Yes, there was two inch solid partitions and a little plaster over masonry on it.

Q. Where would that be, in what areas? A. In the

hallways they plastered, they put tile over the hallways in the thin-set method.

Q. O.K. And that was about 1961, was it? A. Yes, '60 and '61, yes.

Q. How about the Beall Department Store? A. That is in Beaumont.

Q. Is that in Local 79? A. That is in Beaumont.

Q. All right. Never mind.

How about United Gas Building? A. In Baytown?

Q. Yes. [1069] A. This was mostly mosaics stuck onto a brown coat of cement on the outside.

Q. All right. A. Just strips over and under the windows.

Q. And you browned for that? A. Yes, sir.

Q. With plasterers? A. Yes, sir.

Q. And how was the mosaic put on? A. Thin-set method.

Q. Was that about 1961? A. Yes, sir.

Q. How about the Robert E. Lee High School in Baytown, do you recall that one? A. Yes, sir, there was very little tile in the lobby of that, and it was over plaster walls, which were scratched and browned by my men.

Q. Was that gypsum or Portland? A. All where it called for the tile it was Portland.

Q. All right.

How about the First National Bank in Livingston, Texas? A. This was just the bathrooms and some little bit of work in the lobby, and it was scratched and browned by my plasterers.

Q. Bellfort State Bank in Houston. A. The same situation.

[1070] Q. Was that in 1965? A. Yes.

Q. Do you recall the tile contractor on that? A. Not offhand, no.

Q. How about the Second National Bank in, what is this, Atlanta, Texas? A. That is out of this jurisdiction.

Q. Oh.

How about the Alvin State Bank, do you recall that one back in '58? A. Yes, sir. There was tile in all the bathrooms which were set, I don't really remember how it was set there, whether it was thin-set or conventional.

Q. You browned it out, though, is that right? I mean. you put the scratch and brown coat on? A. We scratched the walls and done what plastering was required by the specifications. I don't actually remember how that one was.

Q. O.K. How about the First State Bank at Alvin? A. This was a remodel job. We did all the lathing on it preparatory to the application of marble, which was stuck over the lath and plaster, and I really don't think there was any thin-set tile on that except in the entryway, which was over some that was already existing.

Q. I see. O.K.

[1071] How about Hermann Hospital addition, do you recall that one? A. Yes, sir.

Q. Is that a recent job? A. Yes, sir.

Q. What year would that be, approximately? A. Last year.

Q. All right.

And that is here in Houston? A. Yes, sir.

Q. And was there any back-up for tile done there by your people? A. That job was a sheetrock job.

Q. I see. A. With a thin coat of plaster over it, and there was quite a bit of fireproofing around the stairwalls which the tile, if any, was used on the rest room sides and I can't really say how the tile was applied or if there was any there.

Q. O.K. A. Other than some mosaic on the outside, which was over walls that we fabricated and put above the doors.

Q. O.K.

How about United Surgical and Dental Trades Center? A. That plastering there was mostly over masonry in the bathroom areas, and we did do this browning.

[1072] All right.

Tile set in what manner? A. In the thin-set manner.

Q. Do you recall any other jobs offhand other than the ones we have named? A. No, sir.

Q. Did you have a job, a hospital job in Yoakum, Texas? A. Yes, sir.

Q. When was that? A. This was finished about this time last year.

Q. All right. And did you have any back-up for tile there? A. Yes, sir, we built all of the walls and ceilings on that job and all of the bathrooms were tiled over cement and brown coat and scratched coat that we put in.

Q. All right. Was that thin-set, too? A. Yes, sir.

Hearing Officer: Is this Yoakum within 79's jurisdiction?

Mr. Capuano: Yes, sir.

The Witness: It's on the border.

Q. (By Mr. Capuano) Now, have you prepared walls with gypsum plaster which were to receive tile? A. Yes, sir.

Q. Now, would you tell me just generally how your people would prepare, your plasterers would prepare a wall with Portland cement to receive tile? A. Take a metal lath wall. [1073] A. Well, to start with, the lathers would build the wall out of channel iron and metal lath and plumb it, and the plasterers would scratch it and brown it plumb.

Q. How would they put the brown coat on, the plasterers? A. With a hawk and trowel and put it on plumb.

Q. All right.

Tell me how your people, your plasterers, would prepare the same wall if it was going to be made out of gypsum plaster. A. In the same manner, exactly.

Q. Would there be any difference in how they—let me ask you this, would they do anything with the wall, the plasterers, with their brown coat? How would they actually put their brown coat on? A. To receive tile or just—

Q. No, receive tile, Portland cement. A. Well, if it was a long hallway where everything would reflect imperfections or faults, we would plumb, we would find the center of the hallway, snap a line down the center, start at end end, we would make a plumb mark up to the height, door header height, and pull a line from one end of the hallway to the other, and use molding plaster to make a dot every six foot or rod length, which would coincide and be directly square and plumb with the center line in the floor.

[1074] Q. I see. A. And then we would build a screed from one end to the other to come flush with these dots, and then fill the plaster in from there down and up.

Q. Rod off from there, then? A. Yes, sir.

Q. Now, when your company has been preparing the walls to receive plaster on these jobs, I am sorry, to receive tile on these jobs you just described to me, has any tile setter union representative or any tile setters come to you and claimed the work that the plasterers were doing? A. No, sir.

Q. Now, have you ever seen tile installed in the conventional method in a thick mortar setting bed? A. Yes, sir, I have helped.

Q. You have helped do it? A. Yes, sir, the first job I ever had was as a tile setter's helper.

Q. All right.

And you have seen plasterers put up a brown mortar coat also, haven't you? A. Yes, sir.

Q. Are the materials in those two coats basically the same? A. Basically.

Q. All right.

[1075] Now, could you tell me which craft, tile setter or plasterer, can do a more skillful and more efficient job in putting that coat of mortar on the wall? A. Well, you are asking for two, an answer to two questions at once. First you say more skillful. I don't think the plasterers are any more skillful as far as getting the wall plumber because you can only get it perfect or the quality can only be so good, I don't care who puts it up.

Q. All right. A. But then you ask me who is the most proficient? If you mean who is the fastest and who can perform this the fastest, the plasterers can perform it the fastest, but I don't believe he is any better in his finished work. I don't believe it's any better than a tile setter. But it is as good and it is faster.

Q. All right.

Now, could you tell me whether you as a plastering contractor have received any complaints from tile contractors about the quality of the work that your plasterers perform under the tile? A. Well, this covers a long period of time. Now, there was a time, I think, in 1959 we had problems on one job, and I haven't run into any since then.

Q. Now, could you tell me some other types of installations where your plasterers use Portland cement besides behind tile? [1076] A. We use so much Portland cement my plasterers are getting to think there isn't any gyp any more. Last year we didn't put four hundred bags of gyp all year long. We put several carloads, in fact we averaged practically a carload of cement a month, on canopies and then the exterior of buildings, and overhangs, just many places that it's used on the exterior of buildings and some interiors, but mostly, generally speaking, Portland cement is used in the wet areas on the interiors of buildings and mostly always on exteriors.

Q. O.K.

Now, you are a lathing contractor also? A. Yes, sir.

Q. Do you also, then, build walls from the outside, I mean, build the complete wall? A. Yes, sir, we did on this Willowmeadows Church, we built the complete wall, outside and inside, of the exterior of the building.

Q. Including the studding that goes in the building of the wall? A. Yes, sir.

Q. Could you tell me, in your opinion, which craft, the tile setters or the plasterers, has the area practice in this Houston metropolitan area for the preparation of walls to receive tile? And I am talking about the Portland cement

mortar coat over which tile is to be installed in the thin-set [1077] method. A. Well, actually I can only speak for the jobs that we do.

Q. Yes, in your experience. A. Which last year we did seventy-five, seventy-eight jobs, if you count little bitty contracts as jobs. And I don't know of any instance where anyone else put up the brown coat for the tile. This may have happened, but I don't know of it.

Q. O.K. A. On the jobs that I do know about.

Q. Well, I believe you said we. Which craft was it that did all these jobs? A. The plasterers.

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ERNEST ALFONSE RICHTER

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified [1078] as follows:

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Q. (By Mr. Capuano) Mr. Richter, could you tell me by whom you are employed? A. Tobin & Rooney Plastering Contractors.

Q. And what is your position with Tobin & Rooney? A. Field superintendent.

Q. You are a plasterer, are you? A. Yes, sir.

Q. How long have you been a plasterer? A. Forty-two years.

Q. How long have you been in a supervisory position for Tobin & Rooney? A. Approximately ten.

Q. Now, in connection with your work as a field supervisor, have you had jobs under your supervision where walls have been prepared with Portland cement to receive tile? A. I have.

Q. And have you prepared walls where tile was installed in both the conventional and thin-set methods? A. I have.

[1079] Q. Now, I am going to ask you about various jobs and I would appreciate it if you could tell me if you

recognize these jobs and can tell me anything about them. How about the Boy Scouts Building here in Houston? A. Yes, sir, the toilet rooms in that were browned out by the plasterers and fixed up for the thin-set method. They were plumbed, squared.

Q. Rodded, too? A. Rodded, too.

Q. Was that over block, do you know, or metal lath? A. Some of it was over metal lath and some of it was on block. It's been about five years, I think.

Q. O.K.

Now, how about St. Joseph's Hospital, do you recall that job? A. Yes, sir.

Q. Is that here in Houston? A. Yes sir.

Q. When was that? A. That was just this past year.

Q. And was there a back-up for tile done there? A. Yes, sir, in all bathrooms.

Q. And where were the bathrooms, in each room? A. In the rooms.

Q. You mean in each hospital bedroom, in effect? [1080] A. That's right. In this particular wing I believe that you are speaking of there was the north wing, and it had three mechanical floors underneath it. Some parts had a kitchen in it, but we did both wings of the hospital, and they were all done the same way.

Q. O.K. And was the tile set in the thin-set method? A. Yes, sir.

Q. And who put on the brown or plumb coat of mortar? A. Plasterers.

Q. Did you have scratching there underneath it, too? A. Some places, where it was metal lath.

Q. Do you recall the tile contractor on that job? A. No, sir, I sure don't.

Q. How about the Boy Scout Building? A. No, I don't.

Q. Do you recall whether your plumb coat of mortar was dry when the tile setters started to apply their thin-set material? A. When you speak of dry how many days elapsed in between the applications, is that what you are speaking about?

Q. Yes. A. I would say approximately a week.

Q. O.K. A. On the St. Joseph's Hospital. Sometimes it's longer.

Q. How about the Nurses Dormitory at the Houston Medical [1081] Center, is that— A. Yes.

Q. When was that job, approximately? A. Oh, that job was approximately '62, I believe.

Q. All right.

And what type of tile wall preparation did you do there? A. What type? Same type. We scratched and browned wherever there was lath.

Q. And where did they have or where was the tile going to be installed in that job? A. In the bathrooms.

Q. In the bathrooms. O.K.

How about the Windsor School in Houston, do you recall that one? A. Yes, sir.

Q. About '62, was it? A. Yes, sir.

Q. What type of installation was that? A. That was thin-set.

Q. Did your plasterers perform the same functions we have been talking about? A. Yes, sir.

Q. And what did you have there, bathrooms? A. Bathrooms, yes, sir.

Q. Shower rooms? [1082] A. Some places in corridors, locker rooms.

Q. Corridors, too, you say? A. Some places around the drinking fountains sometimes they have a tile panel.

Q. I see. And was this in Portland cement? A. Yes, sir.

Q. Do you recall the tile contractor? A. That was in '61. No, I don't. That is pretty far back.

Q. How about the Cypress-Fairbanks School? A. The Cypress-Fairbanks School, yes, sir.

Q. That is in the Houston area, too? A. That is in the Houston area. It's up the road about twenty miles.

Q. About in 1962, was it? A. Yes, sir.

Q. Was that a similar installation as to what we have just been talking about? A. Yes, sir, the tile contractor on that was Narciso.

Q. All right.

And plasterers did your browning and plastering? A. Yes, sir. * * *

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[1083] Q. All right. How about the Cookbook Bakery? A. Yes, sir.

Q. Is that here in Houston? A. Yes, sir.

Q. Was that back in about '58? A. Yes, sir.

Q. And was the installation similar or different? A. Similar, same thing.

Q. How about the Hermann— A. Professional Building?

Q. Professional Building, yes. Is that here in Houston, too? A. Yes, sir.

[1084] Q. About 1958? A. Yes, sir.

Q. Installation the same? A. The same thing.

Q. How about the Houston Hospital at Elgin and Ennis in about 1961, do you recall that one? A. Yes, sir.

Q. And what was the— A. We browned for the tile in the kitchen and in the bathrooms and in the wet areas.

Q. Thin-set method? A. Thinset.

Q. How about Tidelands Motel on Main Street? A. Yes, sir.

Q. Is that back about '57 and 58? A. Yes, sir, that was originally. They added some since then, but we didn't have it.

Q. All right. Was that thin-set, too? A. Same thing.

Q. You did the browning? A. Yes, sir.

Q. How about Little York School? A. Yes, sir, that is out here on Little York Road. Same thing.

Q. All right.

[1085] Let me read off the various names of some jobs I have here, and if you don't recognize one, interrupt me, but if you recognize them all, wait until I finish with the list and we can talk about it. A. O.K.

Q. How about the Reed Road School? A. Yes.

Q. Dominican College? A. Yes.

Q. McBar Company? A. Yes, sir.

Q. Hotel America? A. Yes, sir.

Q. 2016 Main Building? A. Yes, sir.

Q. What was that, the name of the building or the address of the building? A. 2016 Building. It's apartments.

Q. Oh.

T. J. Bettes? A. T. J. Bettes.

Q. What is that? A. They remodeled an office building they bought on Franklin and Main, and we went in there and remodeled it and we had some bathrooms in there that was done in the thin-set [1086] method.

Q. Fannin State Bank? A. Yes, sir, that was in a new building.

Q. St. Elizabeth's Hospital, Number 2 Wing? A. Yes, sir.

Q. Sharpstown Hospital Memorial or, wait a minute, I will take that one off.

Kress. A. At Main and Capitol, yes, sir.

Q. What is that, is that an office building? A. That is an office building up over the Kress Store. It was called the Kress building.

Q. How about the Medical Arts remodeling job? A. Yes, sir.

Q. Americana Building? A. Yes, sir.

Q. Hotel America? A. Yes, sir.

Q. Siteman Building? A. Yes, sir.

Q. American General? A. Yes, sir.

Q. What is the American General? A. American General is the insurance building out here on Allen Parkway and the tile work that was in that, we [1087] didn't have too much, it was just wing walls in the toilet rooms that divided the individual commodes, and they had tile on those wing walls.

Q. Is that about 1965? A. Yes, sir.

Q. How about Jones Hall? A. Yes, sir, that was last year.

Q. Now, were all these jobs in the Houston area that we just went over? A. Yes, sir.

Q. And were all of them between about 1960 and 1966? A. Well, some of them were '58 and '57.

Q. I mean just the last ones we covered. A. Just the last ones, yes, sir.

Q. Now, was the installation on those any different from the ones we had just covered previously? A. No, sir.

Q. Same type installation? A. Same type installation.

Q. You scratched and browned? A. Yes, sir.

Q. Tile is the thin-set, is that right? A. Uh-huh. We are also doing the one across the street here the same way, the Civic Center.

Q. What is that? [1088] A. We are also doing the Civic Center the same way.

Q. The Civic Center across the street? A. Yes, sir.

Q. Is that a big job? A. It covers three blocks.

Q. Pardon me? A. It covers three blocks.

Q. And what are you doing there? A. Well, we are plastering.

Q. In connection with tile. A. Oh, we are browning for tile, for thin-set.

Q. And any scratch coat under your brown there? A. No, sir, might be one pipe chase in the toilet room that has lath on it, but the rest of it would be on concrete block.

Q. All right. And you are putting on one plumb coat? A. One plumb coat.

Q. And then the tile setters are going to install their tile the thin-set method? A. That's right.

Q. By the way, all those jobs we covered, I am not sure we mentioned it, those are the jobs where you did the back-up for the tile, right? A. Yes, sir.

Q. Now, in putting up your brown coat, say, on top of the [1089] scratch coat, would you tell me what tasks your plasterers would do? A. Well, it depends particularly on the specific area you are working in. If it's a bathroom you have to work according to your plumbing outlet, your door reveals and things such as that. If you are working inside of a corridor you have to find the center line and work off of it. But in your bathrooms you have to get,

keep a certain dimension on the hub on the plumbing. Let me inject this thought, we do quite a bit of real large work, and we get into the multiple bathroom facilities to where we have a gang of plumbing fixtures that stick out of one long wall. And you work with the plumbing and then you work toward the door. There are several of the things you have to work to. The general contractor generally lays out the finish wall line and you work off of it.

Q. All right.

Then how will your plasterers go about putting up your brown coat? A. How would they go about putting up—

Q. Yes. A. They would screed the wall.

Q. Put screeds on the wall? A. Put screeds on the wall. horizontal and vertical screeds.

Q. All right.

[1090] How about squaring? A. Well, if they have to square any they could go with three, four, five method or either six, eight and ten.

Q. O.K. A. Or either we use a big, large wooden square lots of times in a small bathroom like hotel bathrooms or hospital bathrooms, we will make a couple of wooden squares, and after we get one wall that has the fixed location for the finished type of plaster, why, we square off of that and work around a small room.

Q. O.K.

Have the tile setters ever made a claim on you for the installation of your brown coat? A. No, they never asked for the brown coat, no, sir.

Q. Now, when you go on a job do you have any dimensions that you must meet? A. In what respect?

Q. In various rooms. A. In various rooms there are dimensions on the plans.

Q. There are dimensions on the plans? A. Yes, sir, and if there is any cabinet work, why, you have to stay within those dimensions.

Q. Can you vary those dimensions on your own? A. No, sir, we never do.

Q. Why is that? [1091] A. We get authorizations to vary them if it goes against the plans and specifications. Otherwise you will have to take it down if it's not right. We verify it with the superintendent and if he can't verify it, why, he goes to the architect.

Q. Why is it so important that you maintain the specifications on the plans? A. Well a lot of these prefab fixtures, Formica tops and things like that, that can't be cut and trimmed after they get on the job, and they are made up to a certain specific measurement, and when they slip into this particular spot they would have to go in there, whether it be tile or whether it be plaster, you have to use the same—

Q. Dimensions? A. Dimensions, everything such as that.

Q. Now, do you confer with any other craft superintendents or foremen on construction jobs in connection with your work? A. Yes, sir, we do.

Q. Pardon me? A. Yes, sir.

Q. Who do you confer with, what crafts? I don't mean names. A. You mean in reference to tile work or reference to—

Q. Yes. A. —anything? Well, whereover we have any discrepancies I have a foreman on the job that takes care of it, that works [1092] with the superintendent. If it's something he can't take care of, well, I will try and go up over him.

Q. Do you talk to any crafts besides the, in other words, in connection with your work do you have to talk to any other craft foremen on the job? A. Oh, yes, sir. On these hubs on these bathrooms. Now, the plumber needs a specific measurement. You have to get the thickness of your tile. You can either get it from a tile man or either you can get it from the architect. He generally has a sample of what he has got. And when you get with the plumber and find out how much protrusion he has to have on the hub of his pipe and then you start working from there, and that is generally the first wall we start.

Q. Are the tubs already installed when you do the area around the tub? A. The tub?

Q. Yes. A. Yes, sir.

Q. They are? A. Yes, sir.

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[1094] Q. All right.

Now, have you seen tile setters install that three-eighths of an inch coat you just mentioned? A. Sure have, yes, sir.

Q. Have you seen plasterers install your brown or float coat? A. Yes, sir.

Q. Could you tell me whether one craft performs the installation of that mortar coat, be it a brown coat or a three-eighths setting bed, more efficienty than the other craft? A. More efficiently?

Q. Yes. A. I would say the plasterer would.

Q. Pardon me? A. The plasterer would.

Q. And why would you say that? [1095] A. Well, because he can do it faster. He works with a hawk and trowel eight hours a day. You might say, well, the tile setter works with it two hours. It would be efficiently, it would cost less for the operation.

Q. For whom to do it? A. Huh?

Q. For which craft to do it? A. Well, I would say for the job—job-wise cost, job cost-wise?

Q. Yes. A. I would say the plasterer could do the work a whole lot quicker.

Q. All right.

What would be your opinion as to the quality of the installation, in other words, the plumbness and straightness, and so forth? A. Well, I would say that our men could do it just as good as theirs. They might take a little bit longer.

Q. Who may take longer? A. Well, the tile setter.

Q. I see.

Now, have you had situations where you will have bathrooms with a little wainscot and gypsum plaster above it? A. Yes, sir.

Q. And we have had some testimony on this. Would your method of installation be similar to that? Have you been [1096] sitting here during this testimony? A. Yes, sir.

Q. You would put in the brown coat and then your finish coat before the tile is installed? A. Yes, sir.

Q. And that is typical? A. Typical, unless it specified that the finish coat should finish flush with the tile.

Q. All right. A. And then the tile has to go in and we get the finish coat afterward.

Q. Assuming you have your finish coat already on the wall above the wainscoting, are the dimensions of the room set at that point? A. Yes, sir, that would be set in setting your dimensions. In other words, the brown coat that you put on for the tile man would be continued up the wall and then as you come down with your finish coat you would come down approximately an inch or an inch and a half below the tile line so that whenever the tile man finished his operation it would be complete. There would be no patching involved.

Q. Now, if another craft did the brown coat for the tile below the wainscoting—let me put it this way, if one craft did the brown coat for the wainscoting and a different craft did the brown coat for the gypsum plaster above the [1097] wainscoting would they have to, and assuming the tile is going to be flush with your plaster, would they both have to use the same dimensions for plumbness and squareness, and so forth? A. Well, let me say this, that in what respect are you asking me this question, now, that if someone else was to put on the brown coat?

Q. Yes, in other words, another craft other than plasterers put on the brown coat up to the wainscoting, top of the wainscoting, the tile. A. Yes, sir.

Q. Then your plasterers did the gypsum brown coat above that, and they put the white coat above that, but another craft was going to put the brown coat below it, and the tile is to finish flush with the plaster, can you have, would one craft have to follow the dimensions already set

by the other craft or could they each go their own way? A. Well, I have never run into that particular situation. I know what you are saying there, that if someone, say that, for instance, that the tile man goes in there and browns up the wall, we will have to follow his wall. Otherwise you will have a variance of thickness on his tile wainscot around the top of the tile.

Q. All right.

And if you went in and browned the wall before he put his [1098] brown coat in the bottom, he would have to follow your brown coat, correct? A. That's right.

Q. Now, in connection with the jobs you have under your supervision and taking last year as an example, 1966, could you tell me what percentage of the total number of jobs you had where there was included for your plasterer's back-up on the installation of a plumb coat of mortar for the installation of tile? Do you understand the question? A. Yes, sir. I would say about ninety-five per cent.

Q. All right. A. We are on one job now that they are applying the tile directly to concrete block on the Houston Natural Gas Building, twenty-eight stories.

Q. Directly to block? A. Directly to block.

Q. Now, in your experience could you tell me in this area which craft has the area practice for the installation of this plumb coat of mortar behind tile to be installed in the thin-set method? A. Well, I don't see any other way out. We do ninety-five per cent of it.

Q. The plasterers do? A. The plasterers do. In the area.

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[1099] HARRY DUCKETT

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

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[1100] Direct Examination

Q. (By Mr. Capuano) Mr. Ducket, could you tell me what company you are connected with? A. I am at the present time connected with the Plastering Contractors Corporation.

Q. And what is your position with that company? A. President.

Q. And how long have you been connected with this particular company? A. Since we purchased Charles F. Schilling Company two and a half years ago.

Q. Were you with another employer or company prior to that time, two and a half years ago? A. Yes, I was with Charles F. Schilling Company.

Q. Oh, I see. A. And vice president of that company and head of the Plastering Division for seven years.

Q. For seven years. A. Uh-huh.

Q. All right.

And what kind of company was Charles Schilling Company? A. He was a multiple organization of acoustical tile, flooring and plastering and dry wall.

[1101] Q. All right.

And prior to that what company were you connected with? A. I was with the American Construction Company, general contractors, for approximately thirty years.

Q. They are a general contractor? A. Yes, sir.

Q. All right. A. And let me say this, headed their plastering Division which they did their own plastering.

Q. O.K.

And has all this been in the Houston area? A. Right.

Q. Now, during your experience with Plastering Contractors and Schilling, had your company had contracts where you prepared walls to receive tile? A. Yes.

Q. Now, I am going to go over a few jobs with you. Let me ask you this first, can you give me the name of any jobs that you can recall where you prepared walls to receive tile? A. Quite a few of them.

Q. All right. You give me the ones you can remember.

A. Twin Towers jobs, one of which is completed and the other one isn't completed at present.

Q. What are Twin Towers, are they apartment houses? A. They are apartment houses.

[1102] Q. And what type of preparation for tile did you do there? A. We scratched and browned the entire surface.

Q. What were there, bathrooms in the apartments? A. In the bathrooms, right.

Q. And this was over metal lath, I gather? A. Right.

Q. And Portland cement? A. Portland cement.

Q. Now, were the whole bathrooms Portland cement? A. Yes.

Q. O.K.

And how was the tile set? A. It was all thin coat, thin-set.

Q. Thin-set method? A. Right.

Q. Do you know what type of commercial thin-set was being used? A. Not positive, but L.&M., I think.

Q. O.K. That was Twin Towers. Can you think of another one? A. We have done three high schools in Spring Branch.

Q. O.K. A. All of which we scratched and browned behind the ceramic tile.

Q. And when were they done or are they still in progress? [1103] A. One is in progress now, and the other two have been done within the last three years.

Q. All right. Who did the scratching and browning? A. The plasterers did the scratching and browning throughout.

Q. Is that going to be thin-set or were they thin-set, too? A. Yes.

Q. All right.

Can you think of any other jobs? A. We did —

Q. 500 Jefferson Building? A. 500 Jefferson Building. Which was all scratched and browned for ceramic tile.

Q. What is that, an office building? A. That is an office building.

Q. How about the zoo birdhouse? A. We did the birdhouse at the zoo.

Q. All right. A. The toilet rooms. There are two toilet rooms in the thing, which were scratched and browned, but the whole job is Portland cement.

Q. What do you mean the whole job is Portland cement? A. Imitation rocks, and the entire job on it was done with Portland cement.

Q. You mean the outside, exterior of the building? A. The inside of the building.

Q. Inside, too? [1104] A. Including the partitions, which were two-inch plaster partitions.

Q. What kind of plaster do you mean, gypsum or Portland? A. Portland.

Q. Do you know the let's go back, do you know the tile contractor on the [illegible] Towers? A. I do not, I don't remember.

Q. How about the Spring Branch schools? A. I don't remember.

Q. How about 500 Jefferson? A. I don't remember which one was there.

Q. And the zoo birdhouse? A. No, I do not.

Q. McGinty office? A. McGinty Office Building.

Q. That is an office building here? A. Right. That is a small office building.

Q. When was that, last year? A. That was last year.

Q. Same installation, scratching and browning? A. Part of it was scratched and browned on metal lath and part of it was thin-set on dry wall.

Q. O.K. And all these have been in Houston, haven't they? A. Right.

Q. How about the Brazosport School? [1105] A. That is the only that is not in Houston. That is at Velasco, Texas.

Q. The McGinty office building, what tile contractor? A. I don't recall.

Q. All right.

This Brazosport School, was that—when was that, approximately? A. Oh, five, four years ago.

Q. All right.

And was that the same installation, thin-set? A. Right.

Q. Where did you have tile there? A. In the bathrooms, toilet rooms.

Q. Who was the tile contractor, do you recall? A. I don't recall.

Q. How about the Cameron Lob? A. Cameron Laboratories.

Q. Oh, Cameron Laboratories, I am sorry. A. The partitions in there were all plastered either on metal lath or masonry, and there was quite a bit of ceramic tile in behind laboratory fixtures and in the toilet rooms, all of which we scratched and browned behind.

Q. With Portland cement? A. With Portland cement.

Q. Tile contractor, do you know? [1106] A. I do not. I will say this, I have done a lot of work with Mr. Martini and Mr. Zambon and Narciso, and I have no, I just don't recall which ones did which job.

Q. I see. O.K.

How about the Petrotex Office Building? A. It was an office building out on the east end of town, east side of town, which we scratched and browned behind the ceramic tile there.

Q. Was that 1965? A. That was '65. That was the third job we had done out there for them, '65 and '63 and '61, I believe.

Q. Pardon me, you had three jobs out there? A. There were three different jobs out there.

Q. I see.

Were any of them conventional method or were they all— A. I think the first one was the conventional method.

Q. You mean over your brown coat— A. We put the brown coat on and then the conventional bed coat was put on, and the tile installed immediately.

Q. Then on the other two jobs what was done after your brown coat? A. A thin coat.

Q. They put a thin-set after your brown? A. Right.

Q. All right.

[1107] How about the Woodridge Church? A. The Woodridge Church was all plastered throughout on ceilings and walls and behind the ceramic tile wainscots in the rooms, in the bathrooms, we scratched and browned with Portland cement.

Q. Is that in 1965? A. Right.

Q. Do you know the tile contractor? A. I do not.

Mr. Capuano: One moment, please.

Q. (By Mr. Capuano) How about the Bank of the Southwest Towers, do you recall that one? A. Yes, that was a twenty-one story office building which has all metal lath and plaster partitions throughout it. The toilet rooms were all scratched and browned.

Q. And tile— A. Behind the ceramic tile.

Q. How was the tile installed? A. It was—

Q. I mean, what method? A. I am sure it is thin-set.

Q. Do you recall the tile contractor? A. I do not.

Q. Who did this scratching and browning that you put on? A. The plasterers, my plasterers did it.

[1108] Q. All these jobs were in Houston, were they? A. Right, except for the Brazosport School.

Q. Yes. That is within the jurisdiction of 79, isn't it? A. It is.

Q. Could you tell me some other areas where you as a plastering contractor used Portland cement? A. Yes, a great many jobs at the present time, within the last few years, we have had what is called marble crete, which is a finish surface on exterior walls, curtain wall construction, that the entire wall, both inside and outside of metal studs, is covered with lath and both the inside and the outside is scratched, browned and finished with Portland cement.

Q. Stucco, too? Stucco in other places? A. Yes. The Conquistador Apartments, which is again a twenty, seventeen story apartment in Sharpstown, the entire curtain wall areas are Portland cement. It was dry wall inside and the tile was stuck there on the sheetrock, but the entire exterior of the building, practically, is Portland cement.

Q. Now, have the tile setters ever made a claim on you for the installation of your Portland cement mortar coat, the plumb coat? A. Directly, no.

Q. Now, have you seen the installation of tile in the conventional method being done? [1109] A. Over a great many years, yes.

Q. All right.

Have you ever seen tile setters actually installing their mortar setting bed? A. Yes.

Q. I am talking about the conventional method now. A. Right.

Q. And you have seen plasterers do it, of course. A. Right.

Q. And the materials are basically the same, aren't they? A. Yes.

Q. Now, could you tell me which craft does the more efficient job in the installation of the mortar coat, plumb coat, to which tile is to be installed? A. If by efficient you mean more speedily, more economically, the plasterers do. As far as the—

Q. Quality. A. Yes, the quality of the efficiency on the thing, there is practically no difference between the two of them.

Q. You mean they will both put up a plumb wall straight? A. One is just as good as the other.

Q. O.K.

Why do you say the plasterer would be more efficient, though? A. Because he uses a trowel and hawk for practically eight [1110] hours a day, whereas the tile setter puts it up one or two hours or three, maybe, and then uses the rest of his time in the installation of his ceramic tile.

Q. Now, have you as a plastering contractor received any complaints from the tile contractors about your work of your men? A. No.

Q. I am talking about the back-up for tile. A. No, I have not.

Q. Now, could you tell me in your experience in this area which craft has the area practice as far as putting up a mortar coat, plumb coat of mortar, on which tile is to be installed in the thin-set method. A. The plasterers have been doing it probably ninety per of the time, as far as I am concerned.

Q. O.K. A. I will say this, we do figure it all the time.

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Cross Examination

Q. (By Miss Thacker) Mr. Duckett, did you say you did the Southwest Towers Building? A. Yes, ma'am.

Q. Conventional method? [1111] A. As I recall it, it was thin-set, but I am not sure.

Q. Texas State Tile floated their own surface there? A. It was conventional.

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Q. Now, of your total plastering work that you do, Mr. Duckett, all of your plastering work that you do, what per cent of that total is the preparation to receive tile? A. I would hate to set a percentage on it because that is one thing we don't keep any records of. As I said, we do figure always to scratch and brown behind ceramic tile.

Q. But you don't actually know? A. I don't know exactly what that percentage of the total would be.

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[1114] ARTHUR SANDERS

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Capuano) Mr. Sanders, by whom are you employed? A. Tobin & Rooney.

Q. And in what capacity? A. Foreman.

Q. Plastering foreman? A. Plastering foreman.

Q. Are you a plasterer by trade? A. Yes, sir.

Q. How long have you been a plasterer? [1115] A. Twenty-one years.

Q. Did you serve an apprenticeship? A. Yes, sir.

Q. Where? A. St. Louis and East St. Louis, Illinois.

Q. All right.

Now, have you run jobs for Tobin & Rooney where your plasterers performed back-up for tile? A. Practically every one of them.

Q. Every one of the jobs? A. Uh-huh.

Q. Can you give me the names of some of the jobs? A. Addition to the Jeff Davis Hospital.

Q. All right. A. That was in about '58, I imagine it was.

Q. All right.

And that is here in the Houston area? A. Yes, sir.

Q. And what type of back-up did you have there for the tile? A. Cement for thin bed method.

Q. Was it over metal lath or what? A. Metal lath and some tile.

Q. What do you mean some tile- A. Some tile block.

Q. You mean clay tile walls? [1116] A. Yes, sir.

Q. And you put over the metal lath how many coats? A. Two, scratched it and plumb coat.

Q. And how was the tile installed over that? A. Thin bed.

Q. O.K.

Do you recall who the tile contractor was? A. Texas Tile & Terrazzo.

Q. All right.

And who did the plumb coat there? A. The plasterers.

Q. Can you think of another job? A. Humble Building.

Q. Humble Building? A. Yes, sir.

Q. Where is that? A. Houston, downtown.

Q. And when was that? A. It run from '59 to about '61.

Q. All right. And tell me what you did there. A. The bathrooms were browned over gypsum and finished before they stuck tile over them.

Q. Browned and finished. What do you mean by finished? A. Finished coat, similar to these walls right here (indicating).

[1117] Q. Oh. And they put their tile to the gypsum? A. Yes, sir.

Q. You mean the gypsum white coat they put tile to, is that right? A. It wasn't a regular white coat. It was a gypsum trowel finish.

Q. Oh, I see. And they put their tile with some sort of thin-set material? A. It was a thin-set material, yes, sir.

Q. Do you recall having any problem on that job? A. Yes, we had some trouble. They had some trouble with lumpy material. It was making the corners of their tile stick out which was blamed on us.

Q. Would you tell me how you learned about this problem? A. Through the inspector.

Q. Could you explain it to me? A. The inspector checked the walls before the tile was set and then checked it after it was set.

Q. And was there any—did you have to correct any of your work? A. Occasionally we had a little to correct, not a whole lot.

Q. And what did the inspector find after he checked, before and after? A. I don't understand.

Q. Well, you say the inspector checked the walls before the [1118] tile was installed and then after the tile was installed? A. He found that the corners of the tile was sticking out due to the lumps in their mastic.

Q. Underneath the tile? A. Yes, sir.

Hearing Officer: What job was this? I missed that.

Mr. Capuano: Humble Oil Building.

The Witness: Humble Oil & Refining.

Miss Thacker: It was done in '59, you say?

The Witness: The plastering work started in that time.

Miss Thacker: The present building?

The Witness: Yes, ma'am, or '60. I don't know the exact date on it.

Q. (By Mr. Capuano) How long did you continue on that job? A. I was there a total of twenty-eight months, all told, and it started around the early part of—the last part of '59 is when we started our plastering.

Q. And how about the T.S.O. dormitory, is that right? A. T.S.U.

Q. T.S.U. dormitory? A. We scratched the bathrooms only.

Q. All right. What job is that? A. That is Texas Southern University. We did not put the plumb coat on.

Q. O.K.

[1119] And did you work on the Brazesport Hospital? A. Yes, sir.

Q. That is in Freeport, Texas, is it? A. Yes, sir.

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Q. Now, when you are on a job do you confer with the foreman or superintendent of any other crafts? A. Yes, sir, I do.

[1120] Q. Could you tell me which crafts you confer with? A. The plumbers, the superintendent, and if the tile men are on the job, check with them, see what they need.

Q. What is the purpose of this meeting with these other people? A. To see that we hold the right margins and keep everything in line so that the other crafts don't have any trouble with their walls.

Q. O.K.

Were you here during the testimony of Mr. Richter? A. Yes, sir.

Q. Did you hear the way he described how he, his plasterers, plumbed the wall and put it up, and so forth? A. Yes, sir.

Q. Would your testimony be similar to that if I asked you those same questions? A. It sure would.

Q. Now, could you tell me what percentage of the jobs that you do in an average year include back-up for tile?

A. Just practically all the jobs we do include back-up for tile.

Q. And perhaps I should have added, where tile is to be installed over your plumb coat in the thin-set method. A. It's very seldom that we get a job where we don't do the plumb work on.

[1121] Q. Where it's going to be installed in the thin-set method? A. Yes, sir.

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[1123] JOHN L. FLOWERS

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Capuano) Mr. Flowers, could you tell me who you are employed by, please? A. Doerner Plastering Company.

Q. In what capacity? A. Foreman.

Q. How long have you been a plasterer? A. Twenty-one years.

Q. Did you serve an apprenticeship? A. Correct.

Q. Where? [1124] A. Houston.

Q. Now, how long have you worked for Doerner? A. Twenty-one years.

Q. How long have you been a foreman for Doerner? A. About eighteen years.

Q. Now, in connection with your work for Doerner could you tell me if your plasterers have prepared walls to receive tile? A. They have.

Q. Can you give me the names of some of the jobs where you have? A. Well, the last couple of jobs was the Engineering Building, University of Houston.

Q. I think we already had that one.

Was Mr. Saylors on that too? A. Well, he was the superintendent.

Q. He was the superintendent of it. All right. We have already had that one.

Can you think of another one? A. And also the Casa de Maria on Almeda.

Q. Was that the St. Anthony Home? A. Yes.

Miss Thacker: We have had that.

Q. (By Mr. Capuano) How about the Sheraton Lincoln Hotel? A. Sheraton Lincoln Hotel, correct.

[1125] Q. Is that here in Houston? A. Here in Houston.

Q. And when did you do that job? A. In '61.

Q. And could you tell me what type of work your plasterers did on that job for tile? A. We scratched and plumbed the walls for, browned the walls for thin-set tile.

Q. Was this over metal lath? A. Some metal lath, some masonry walls.

Q. All right.

When you put your brown coat on, what would the plasterers do? A. Well, we would plumb, square the walls. Of course, we worked off of the fixtures, the plumbing fixtures.

Q. Did you use screeds? A. We used screeds.

Q. Did you rod the walls? A. Rodded the walls.

Q. How was the tile set? A. Thin-set method.

Q. On top of your brown coat? A. On top of my brown coat.

Q. Do you recall when the tile contractor came to put his tile on? [1126] A. Well, while we were on the job.

Q. Well, how many days would your brown coat sit there before the tile contractor would start applying his tile, average? A. Well, if I recall correctly, I had, I imagine it was several weeks, I had quite a few of the toilet areas ready for the tile setter before they started on them.

Q. O.K.

What did you have, bathrooms, in each room of the hotel, is that what you had there? A. No, in the hotel portion all the tile was, the only tile they had was floor and a base, and this was in the office portion, six through twelve.

Q. I see.

Miss Thacker: The contractor.

Q. (By Mr. Capuano) Do you know? A. Texas State.

Q. O.K.

Now, when you are a foreman on the job do you make any contact with foremen of other crafts? A. Yes, I do.

Q. And for what purpose? A. To work together, we work together with all the crafts. We have to in cases where we, when we start the bathrooms, we work with the plumbers, the general contractor, the toilet [1127] partition people. We have to know the correct dimensions for all of these items before we start our work in order to get a good job.

Q. And— A. Have to know the thickness of the tile.

Q. Who do you find that out from? A. From the tile setters, if they are on the job, and sometimes they are because sometimes the same people are putting down the terrazzo floors.

Q. Putting down the terrazzo floors, you say? A. Correct, yes. The tile setters.

Q. The tile setters put terrazzo floors down, too? A. Some of them are terrazzo men also.

Q. Oh, I see.

And do you ever consult anybody else besides other craft foremen about job conditions? A. Well, the architect and the superintendent, we work hand in hand. If I need to know the thickness of the tile, you know, and the tile setter is not on the job, I will go to architect, he usually has a sample of the tile, for the thickness. Of course, usually the dimensions are on the plans that give us the margin we need to hold.

Q. The plans give you this? A. Right.

Q. Now, have you seen any tile installed in what we call the [1128] conventional setting bed method? A. I have. It's been quite a while ago.

Q. Have you seen tile setters putting that setting bed in, the conventional setting bed? A. The conventional setting bed?

Q. Yes. A. I have seen them in the past.

Q. And is that similar to your brown coat of mortar? A. Right.

Q. In make-up? A. Similar to our brown coat.

Q. You have seen tile setters put your brown coat on, haven't you? A. Yes.

Q. Can you tell me which craft is more skillful in putting that mortar up? A. Well, the plasterers are more skillful.

Q. Sorry? A. The plasterers, I think, are more skillful.

Q. Why do you say that? A. Well, they do it faster and they do as good a job.

Q. Now, would you tell me what percentage of the jobs you do in a year include back-up for tile, in other words, the brown coat, where tile has been set in the thin-set method? A. Well, I could say the jobs I have done in the past [1129] several years, a hundred per cent.

Q. And who did the work on those jobs? A. The plasterers.

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Cross Examination

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Q. Yes. Now, let's see if you understand me. Of all of the plastering work that you do, now, this is inside and outside, [1130] everything, all of the plastering work that you do, would you be able to give any kind of an estimate of what amount is for preparation to receive tile only? A. Well, I understood the question.

Q. Did you? A. I will say forty per cent last year. Now, it's not that way all the time, but last year I was on one job last year.

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[1163] WALTER C. GILLESPIE

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

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Direct Examination

Q. (By Mr. Capuano) Mr. Gillespie, would you tell me what your craft is, please? A. I am a plasterer.

Q. All right. And how long have you been a plasterer? A. Twenty years.

Q. And by whom are you employed? A. Tobin & Rooney.

Q. As a plasterer? A. As a plasterer?

Q. And did you serve an apprenticeship as a plasterer? A. Yes.

[1164] Q. Where? A. In Houston, Texas, Plasterers Local 79.

Q. All right.

And in connection with Local 79 do you have any other job or position besides being just a plasterer for Tobin & Rooney? A. I am a plasterer apprentice instructor.

Q. Plasterer— A. Plasterer apprentice instructor.

Q. How long have you held that position? A. Four years.

Q. And how many apprentices do you have right now in your program? A. Fourteen.

Q. O.K.

Now, would you tell me, do you have any—well, let me do this first—

Miss Thacker: May we go off the record just a minute?

Hearing Officer: Off the record.

(Discussion off the record.)

Hearing Officer: On the record.

Q. (By Mr. Capuano) Mr. Gillespie, could you tell me approximately when you went through the apprentice program? A. I started in February 1947.

Q. All right. [1165] A. And served three and a half years.

Q. All right, sir.

Now, in connection with your apprentice program—let me ask you this first, do you know if your apprentice program has any type of federal government approval? A. Yes, sir.

Q. What agency or department is it approved by? A. The Joint Apprenticeship Committee of the U. S. Government.

Q. All right.

Is that under the Labor Department? A. Yes, sir.

Q. The Bureau of Apprenticeship Training? A. Yes, sir.

Q. Now, could you tell me, your apprentice program, is that run solely by the Local? A. Yes, sir, with the state and city school.

Q. Do you have any sort of committee which oversees your work? A. Yes, sir, we have a Joint Committee.

Q. Joint Committee composed of whom? A. The plasterers and the plaster contractors.

Q. All right.

And is this committee set up as a result of any agreement between the Union and the contractors? [1166] A. Yes, sir.

Q. And do they have an apprenticeship trust agreement? A. Yes, sir.

Q. And, now, could you tell me whether you have—

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Q. (By Mr. Capuano) Now, in connection with your program could you tell me whether you have certain rules and procedures by which you go, selecting your apprentices? A. Yes, sir.

Q. I show you an exhibit marked P-24 and ask you if you can identify that for me? A. These are the procedures by which we go in selecting our apprentices.

Q. These are the procedural rules? A. Yes.

Q. Do you have or do you comply with any other procedural rules bessides your own, any sponsored by the government? A. This was set up with the aid of a government man, and by the Bureau of Labor standards.

Q. By government man you mean the federal government? A. Yes, sir.

Q. They have representatives assist you, is that what you are [1167] saying? A. Yes, sir.

Q. Are they from the Bureau of Apprenticeship Training? A. Yes, sir.

Q. Now, I am going to show you P-25 and ask you if you can identify that for me? A. That is an application for plasterers' apprenticeship.

Q. All right.

And who fills that out? A. The boy that is making application.

Q. To come into your program? A. To come into our program.

Q. And after he fills out that application what is the next step in gaining admission? A. Then we issue him a slip an dhe takes it to the Texas Employment Commission and takes an aptitude test.

Q. I show you what has been marked P-26 and ask you if you can identify that? A. That is the thing that he takes, the piece of paper that he takes to the Texas Employment Commission.

Q. All right.

And what happens at the Texas Employment Commission with this boy or why do you send him there? A. It's to test his ability to use his hands. It's, like I say, an aptitude test. And after he has taken the test it is [1168] graded and sent back to Local 79.

Q. All right.

And I show you P-27 and ask you what that is? A. That is the grade sheet that we use when we are interviewing an apprentice personally. He has to appear before the Apprenticeship Committee for an interview, personally.

Q. Now, is the score on the aptitude test put on this apprentice rating form? A. Yes, sir.

Q. That is P-29, correct?

And then would you tell me what else is put on this rating form? A. Well, we go by this—this is P-27.

Q. I am sorry, P-27. Excuse me.

Wait a minute. Are you sure?

Yes, it is. O.K.

Go ahead, tell me what you put on it. A. As we talk to him, his attitude, the general feelings toward our trade or our craft, and as it says here, we give him the score of his aptitude test, plus others. He has to have a ninth grade education in order to fill out an application. And then his armed force, if he is a veteran or if he has had military service or not.

Q. All right. A. All of these things are concerned.

[1169] Q. Now, after this will the boy be admitted or rejected to the program? A. Yes, sir.

Q. And do you keep a record of that, too? A. Yes, sir.

Q. Do you have a big book? A. Yes, sir.

Q. All right.

Now, after the boy had been admitted to the program, what obligations does he have as far as training? A. He is required to attend school four hours one night each week, and then he has his on-the-job training.

Mr. Capuano: Would you mark that, please?

Miss Thacker: How many hours?

The Witness: Four hours a week.

Miss Thacker: Four hours a week.

(The document above-referred to was marked Plasterers' Exhibit No. 30 for identification.)

Q. (By Mr. Capuano) Now, I show you what has been marked P-30 for identification and ask you if you can tell me what this is? A. It is a guideline that I use in teaching the apprentice boys at the school.

Q. Are these minimum standards? A. Minimum standards that the U. S. Labor Department has put [1170] out.

Q. O. K.

And your program is, what did you say, three and a half years? A. Yes, sir.

Q. And the boy has to go to school one hour or four hours a week? A. Four hours a week.

Q. Four hours for the three and a half years? A. For the three and a half years.

Q. And then he has on-the-job training too, is that right? A. Yes, sir.

Q. He has to work continuously during that period? A. Yes, sir.

Q. All right.

Now, does the apprentice program or you, as an apprentice instructor, keep records as to the type of work that the boy does on the job during this three and a half year period? A. Yes, sir.

Q. I show you what has been marked P-28 and P-29 and ask you if you can tell me what those two exhibits are? A. The P-28 is a book that the boy carries on the job and is recorded in there each and every thing that he does every day. This book is designed to hold a year of his work. Then every week I have this copy, P-29.

[1171] Mr. Capuano: Didn't I give you one?

Miss Thacker: No.

(A document was handed to Miss Thacker by Mr. Capuano.)

A. It's a record, I have a copy of it and keep it for my own records. I also have a copy that I send to Local 79.

Q. (By Mr. Capuano) All right.

And do you put the information on P-29 from the information contained in P-28? A. Yes, sir.

Q. And who fills in P-28? A. The boy himself, fills in what he does each day. At the end of the week the plasterer foreman signs it. It has a place for the plasterer foreman to sign it.

Q. O. K. A. And when he brings it to school it also has a place for the instructor to sign it, and he is given a grade.

Q. O. K.

Now, I notice, for example, taking the—it actually would be Page 5 of P-28, it's not numbered Page 5 but it's the first section that starts out with the blocks where you fill in. A. Yes, sir.

Q. Do you see that? A. Yes, sir.

[1172] Q. And over in the left-hand margin there are various letters of the alphabet beginning with A through M. Could you tell me whether those—what those letters mean? A. Yes, sir, they designate the type of work that this boy does during the day from scratch, brown, as you see, it's lettered.

Q. And is the identification of those letters listed on the previous page? A. Yes, sir.

Q. And then, for example, we have various numbers across the top of Page 5 on horizontal lines, and could you tell me what those numbers indicate? The days of the month? A. Those represent the days of the month.

Q. And then the boy puts in the letter for the type of work he did that day, is that the idea? A. Yes, sir.

Q. I see.

And then you take it off and put it on P-29, is that correct? A. Yes, sir.

Q. And you keep this record, P-29? A. Yes, sir.

Q. And what is the purpose of you keeping P-29? A. We keep our records so that we can determine if the boy is spending too much time on one thing. I mean, continuously, [1173] day after day after day. Such as scratching for six or eight months at a time. Then that way we know if he needs a change, if we feel, if the apprentice feels he needs a change, say, to browning or marble crete or finish work.

Q. You can keep track of his progress? A. Yes, sir.

Q. All right.

Now, could you tell me in connection with your classroom work where does this boy go to attend this one-hour or four hours per week? A. We have a school on the

corner of Smith and Bell Street which is classified as a shop.

Q. All right.

And what do you do in there with the apprentices? A. I teach them the different parts of the craft, of this craft. I teach them how to square and plumb a wall, how to scratch, brown, how to lay out for cornice work, how to miter, how to use a water level.

Q. Go ahead. Continue. A. I teach them math and the intricate parts of plastering, job relations.

Q. Do you do anything with blueprints? A. Yes, sir, we teach them blueprints, how to read them, how to search out the details on the job as to what one specific wall might get, so on and so forth.

[1174] Q. What is a water level? A. A water level is a piece of plastic hose or any type of hose. It has two clear glass places like on a boiler, and water is put in there and it's used to level a ceiling.

Q. All right.

Do you teach them anything about squaring rooms? A. Yes, sir.

Q. What do you teach them about squaring rooms? A. I teach them how to square a room, how to plumb it.

Q. What method do you use to teach them how to square a room? A. I use three different methods.

Q. You teach them three different methods? A. Yes, sir. I teach them to use a regular wooden square, the right-angle triangle method, and the center line method.

Q. Now, in connection with your classroom work, are there texts or books that you use? A. Yes, sir.

Q. What books do you use, can you recall offhand? A. I use the "Practical Plastering Skills" by Brandon and Knowles. Also the book by Dalton. It's for plasterers and cement masons. I use a blueprint book. I believe it's by Dizell.

Q. What materials are the plasterers taught to work with? A. We are taught to work with lime and guaging plaster, [1175] molding plaster.

Q. Gypsum? A. Gypsum plaster, and cement.

Q. And what do you mean by cement, Portland cement? A. Portland cement.

Q. How about keen cement? A. Yes, sir.

Q. Anything to do with acoustics? A. Acoustics, troweled acoustics, blown acoustics, acoustic block.

Q. All right.

What tools do the apprentices use in their training? A. Hawk and trowel, level, a square, plumb bob, chalk line, miter tools, pointing trowel and margin trowel.

Q. Square? A. Yes, sir.

Q. Ruler? A. Yes.

Q. Now, is there anything taught the apprentices in connection with their relation on the job with other trades? A. Yes, sir.

Q. Could you tell me what you teach them in that connection? A. Well, we teach them how to cooperate with each of the other crafts. We are closely connected with the lathers, the plumbers, the tile men. Lots of times the acoustic ceiling [1176] block men.

Q. All right.

And in what way do they have to cooperate, say with the plumber and the tile setter? A. Well, on the plumber, when he sets his fixtures, lots of times he gives us a measurement that he has to have to work by, and the tile setters, we have to plumb and square their work to see that it is right.

Q. Now, in connection with—well, you teach them how to apply—let's take a wall of Portland cement plaster that tile is going to go on. A. Yes, sir.

Q. Do you understand me? A. Yes, sir.

Q. All right.

You teach them to put on a scratch coat, would you? A. Yes, sir.

Q. Then a brown coat? A. Brown coat.

Q. And how would you teach them to put on the brown coat? A. Teach them to run screeds on their wall, be sure that they are plumb. If it has to come over another wall then it must be square.

Q. O. K.

Then they would fill in between the screeds? [1177] A. Block in with a hawk and trowel, apply their mortar between the screeds.

Q. What would they do after they put the mortar between the screeds? A. Between the screeds, they rod it and darby it or shingle float it.

Q. O. K.

Now, in connection with your classroom work, do you do practical plastering work right in your shop or your classroom building there? A. Yes, sir.

Q. Could you tell me how you go about it, I mean, you have some sort of mock-up or something that the boys work on? A. Yes, sir, we have a room built there that is twenty by twenty.

Q. And they work on that? A. They are working on that, yes, sir.

Q. Now, in connection with your teaching the apprentices the plastering trade, do they have to do any elaborate type work or do you teach the many elaborate molding or crafting? A. Yes, sir.

Q. Could you explain that to me, what you do teach them in that connection? A. I teach them how to take a mold off a blueprint, how to cut out the template, how to hoist the mold, how set it up, [1178] how to lay it out and how to run it.

Q. These are molds made out of plaster or— A. These are molds that are made out of plaster and are run in place with a template.

Q. And what are they building here, cornices and things? A. Cornices.

Q. Where would you use those? A. Theaters, hotel lobbies. They could be used any place.

Q. Are those what we see sometimes near ceilings, elaborately carved things running around ceilings or around the center light fixtures in theaters, is that what we are talking about? A. Yes, sir.

Q. And your boys are taught that work? A. Yes, sir, they are also taught how to cast molds of things. Suppose someone wants an elaborate piece of work, then they know how to cast it and make it right in place on the job.

Q. They can cast the mold right there? A. Yes, sir.

* * * * * * * * *

Q. (By Mr. Capuano) I show you what has been marked P-31 and ask you if that is the Dalton book that you said you use in your program? A. Yes, sir.

[1179] Q. And does this book show some of that, the type of work that you teach the apprentices to do? A. Yes, sir.

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[1187] PURL GUY THOMPSON

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

* * * * * * * * * *

Direct Examination

Q. (By Mr. Capuana) Mr. Thompson, are you a plasterer? A. Yes.

Q. And by whom are you employed? A. Tobin & Rooney.

[1188] Q. In what capacity? A. As a foreman.

Q. And how long have you been a plasterer? A. Twenty years.

Q. And approximately how long have you been a foreman? A. About, approximately eight.

Q. And has that all been for Tobin & Rooney? A. Yes, sir.

Q. Now, in connection with your work as a plastering foreman for Tobin & Rooney have you installed jobs where your plasterers put up the plumb coat of mortar for the installation of tile? A. Yes, sir.

Q. Did you do the work on the Humble garage? A. Yes, sir.

Q. And is that here in Houston? A. Yes, sir.

Q. Approximately when was that? A. That was appromately '62.

Q. And what work did your plasterers do there behind the tile? A. We scratched it over the wire, metal lath, and then it was a lot of masonry walls, which we put the one coat of brown coat on.

Q. And then how did the tile setter put on his tile? [1189] A. It was the thin-set method.

Q. Over your brown coat?

Hearing Officer: Who was the tile contractor?

The Witness: Texas State and Terrazzo.

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[1207] JOSEPH T. POWER

was called as a witness by and on behalf of the Plasterers and, having been first duly sworn, was examined and testified as follows:

Hearing Officer: Would you give the court reporter your name?

The Witness: Joseph T. Power.

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[1208] Q. (By Mr. Capuano) Mr. Power, will you please tell us what your position is? A. Executive Vice-President, Plasterers and Cement Masons International Association.

Q. And is that the International Union to which Local 79 is a subordinate body? A. Yes, sir.

Q. Where is your office? A. Washington, D.C.

Q. All right.

Could you tell me in connection with your job as Executive Vice-President what are your duties? A. Assist the general secretary-treasurer and general president, also serve as secretary of the National Apprenticeship Committee.

Q. All right.

I show you what has been marked P-30 and ask you if in connection with your position on the National Apprenticeship Committee you had anything to do with the preparation or promulgation of P-30? [1209] A. Yes, sir.

Q. Would you tell me what that is? A. Well, this committee is made up of contractors and also officials of the Plasterers International Union. I serve as secretary of the committee between the two organizations, namely, the Plastering Contractors Association, the Plasterers and Cement Masons International Association. We drew up these specifications which were in turn submitted to the Bureau of Apprenticeship Training, Department of Labor, and they in turn printed these and we circulated them throughout the United States to our local unions.

Q. All right.

Now, did you, yourself, go through an apprentice program? A. Yes, sir, I did.

Q. Was that a plasterers' apprentice program? A. Yes, sir.

Q. You are a plasterer by trade? A. Yes, sir.

Q. Where did you go through your program? A. Chicago, Illinois.

Q. Now, I show you what has been marked as T-20, and ask you if the Plasterers' jurisdiction is set out in that Constitution? A. Yes, sir, it is.

Q. Could you tell me what page? [1210] A. 117, Section 118.

A. And could you tell me if it includes the preparation of walls to receive tile? A. It most certainly does.

Q. What is the number of that exhibit? A. T-20.

Q. Now, could you tell me generally what the conventional method of setting tile is over metal lath? A. Yes, the plasterer would apply the first coat or scratch coat of mortar to the wire lath to stiffen the base so that the second coat, which is called the brown coat, or plumb coat, can be applied. This brown coat is a true and plumb coat and is there for the tile setter then to apply a setting bed.

Q. The plasterer to apply the brown coat and then the tile setter to apply his setting bed for his tile? A. Yes.

Q. And his setting bed would be made of what? A. In the conventional method, Portland cement.

Q. And any other materials? A. Sand.

Q. Sand? A. Basically the same material as what the plasterer would apply in the scratch coat and brown coat.

Q. I see.

[1211] Then in the thin-set method over metal lath what would be the situation there? A. The plasterer would prepare the wall by plumbing it, by rodding it and squaring it, and after that operation is completed the tile setter would come in with a material similar to Tec, L. & M. or Crest, which would be his setting bed to set his tile.

Q. How would the plasterer, what coats would the plasterer use to plumb, rod and square? A. Well, if it was on wire lath he would have to scratch it. If it was on a masonry foundation he would only have to put the one coat on, the brown coat.

Q. And over a metal lath he would put the brown coat over the scratch, is that right? A. That's right.

Q. Now, Mr. Power, did you cause some pictures to be taken depicting the installation of tile in these two methods? A. Yes, sir, I did.

Q. Were you present when the pictures were taken? A. Yes, sir, I was.

Q. Did you make notes on the back of the pictures since then? A. Yes, I have.

Mr. Capuano: May we go off the record for a moment?

Hearing Officer: Off the record.

[1212] (Discussion off the record.)

Hearing Officer: On the record.

Mr. Capuano: Will you mark these, please?

(The documents above-referred to were marked Plasterers' Exhibits Nos. 34-A through 34-O for identification.)

Q. (By Mr. Capuano) Mr. Power, I show you these exhibits marked 34-A through -O and ask you if these are the pictures that were taken at your direction? A. Yes, sir.

Q. Could you tell me where they were taken? A. They were taken in the Apprenticeship School in the District of Columbia, Washington, D.C.

Q. Apprenticeship School of what craft? A. The Plastering Apprenticeship School.

Q. And is the boy we see depicted in these pictures, who is he? A. He was one of the apprentice plasterers.

Q. All right.

Attending the school? A. Yes, sir.

Q. And, of course, you appear in many, if not all, of them, don't you? A. Yes, sir. I think I am in every one of them.

Q. Now, did you use an actual wall or what did you use in [1213] these pictures? A. It's a mock-up of a wall.

Q. All right.

Now, I am going to show you P-34-A and ask you to tell us what that is. A. Well, this mock-up of a wall shows wire lath being attached to a two-by-four wood frame. It could have been attached to metal studs. However, in this case, to expedite what we are trying to show here, it was put on wood studs and this is wire lath, and it shows the apprentice plasterer getting ready to apply the first coat or scratch coat of mortar to the wall.

Q. All right.

And did you make notes on the back which basically said what you just testified to? A. Yes, sir.

Q. Describes what the picture is, is that right? A. Yes, sir.

Q. All right.

Now, I show you P-34-B and ask you what that depicts. A. Well, this shows the apprentice boy applying the first coat of Portland cement mortar, which is known as the scratch coat.

Q. And what is the purpose of that scratch coat that he is applying on there? [1214] A. Well, the purpose of the scratch coat is to stiffen the wire so that the second coat or the brown coat, or plumb coat, can be applied.

Q. All right.

And I show you P-34-C, and ask you what that picture depicts. A. Well, this picture depicts that the entire area was scratched in with Portland cement mortar, the first coat, and the boy, the apprentice plasterer is using a scarifier to scratch the surface.

Q. Now, I show you what is marked as P-34-D and ask you what that depicts. A. Well, this depicts that the scratch coat has been put on and now the plasterer is getting ready to put in his screeds and plumb the surface.

Q. Now, would he immediately begin putting on those screeds right after he put on the scratch coat or has there been some time lapse in your pictures here? A. Well, you have to understand there is a time lapse in here. The lines have been established by squaring the room, whether he had used the right angle method, three, four, five, six or eight, ten, or whether he had used the method of, the center line method of squaring the room, and what he is doing there is actually bringing up a plumb line from the floor up the wall. In other words, if this picture had shown the wire [1215] lath running down to the floor you would see that he would be bringing that line all the way up. However, at this point he is just putting the mortar on.

Q. He is making the screed out of mortar? A. Making the screed out of mortar. He could have taken a wooden block, put a dab of plaster on the wall in the corner first, stuck a wooden block in there, which would be the line on the floor, and then plumb up another, up to another block up at the height of the straight edge by putting a dab at the top, making those two plumb, and then take this mortar fill in between the two blocks, press his straight edge in and form his plumb screed.

Q. Are you saying he could use wood to make a screed, is that what you mean? A. Yes, he could.

Q. All right.

And here he is putting on a vertical screed, is he? A. That's right.

Q. And it's assuming that the wall has been plumbed, plumber to the floor, and squared, is that right? A. That's right.

Q. And I show you P-34-E and ask you what that is? A. That shows the boy taking a straight edge and a level and plumbing that screed.

Q. The vertical screed he just applied? [1216] A. Right.

Q. I show you P-34-F and ask you what that shows. A. This shows the boy moving down the wall and again this being a mock-up, you have got to visualize that he has moved these down to the length of this straight edge, and he is now putting in another screed the length of that straight edge, which is also again taken from the plumb line to bring that wall true and plumb.

Q. This is parallel to the other vertical screed? A. Yes, sir.

Q. Now, I show you P-34-G and ask you what that represents? A. This, again being a mock-up, this shows that the plasterer apprentice is screeding off horizontal screeds.

Q. And they meet the two vertical screeds? A. They meet the two vertical screeds.

Q. Is there one at the top and one at the bottom? A. One at the top and one at the bottom.

Q. Is he doing anything else there besides just putting on these creeds? What is the boy actually doing? A. He is taking a straight edge now and rodding from one plumb screed to another plumb screed to get in the horizontal screed.

Q. And what is he using on the rod? A. Well, there is a level on the rod at that point, but he is not using it there.

[1217] Q. O.K. A. See, the level is attached to the rod so that he can plumb the wall and be sure that it's true.

Q. I see. O.K. I show you P-34-H. A. Well, this shows the Plasterer applying Portland cement motar in between the screeds. In other words, he is filling in now or flanging in the mortar, and you will notice it's going over the scratch coat.

Q. That he applied earlier? A. That he applied earlier.

Q. O.K.

And I show you P-34-I and ask you what that picture shows? A. This shows the plasterer again flanging in the wall area in between the screeds which have been plumbed.

Q. And P-34-J. A. This shows the apprentice boy with his straight edge and a level checking the plumb of his wall.

Q. O.K. A. You have got to remember that this has all been squared off another wall or at least we are making believe that it has for this mock-up presentation.

Q. O.K. And I show you P-34-K. A. This shows the apprentice boy holding a scratcher in his hand and scratching the second coat or plumb coat of mortar [1218] which is for the setting bed for the tile setter.

Q. You mean the setting bed will go on top of that? A. The setting bed on the conventional method now will go on top of that.

Q. And I notice that you did not or he did not carry the plumb coat all the way over. Is that so we could still see the scratch coat in there? A. The scratch coat and the second coat or plumb coat of mortar.

Q. O.K. A. Brown coat.

Q. Now, I show you P-34-L and look at that and tell me what is now happening. A. Well, you will have to assume from this picture now that this is where the work operation has stopped and this—

Q. You mean as far as the plasterer is concerned? A. As far as the plasterer is concerned. This is what the plasterer has from the 1917 agreement in his jurisdiction, the scratch coat and the brown coat for the plumbing,

rodding and squaring of walls. And he would stop at this point.

And this plasterer apprentice here is acting as a tile setter and the purpose of this is to show the function of what a tile setter would do at this time.

Q. All right. And are you talking of P-34-L? A. Right.

[1219] Q. Now— A. He is putting on his wood screeds, which are to maintain the plumbness for his tile.

Q. What are those wood screeds made of? A. It looks and appears to be, and I know what it was, it was a lattice strip, probably three-sixteenths of an inch.

Q. All right.

This plasterer apprentice is putting them on but he is doing it as if he were a tile setter? A. That's right, because we don't claim that.

Q. O.K.

Now, would the tile setter come immediately after you put on your brown coat to put his screeds on or would there again be some time? A. There would be a time lapse involved.

Q. What would have to happen to your brown coat? A. It would have to get firm and set for him.

Q. O.K.

Now, I show you P-34-M and ask you what that picture depicts? A. Well, this depicts again the first and second coat, plumb coat, that the plasterer applied in a certain section, now has been rodded in between the strips to show that this is the setting bed which the tile setter would set his tile in. That is the upper portion of the picture.

[1220] Q. Just a moment. I am going to have you mark something there.

Now we are talking in P-34-M about—this would be a conventional method installation, right? A. This is a conventional method of applying tile.

Q. All right.

Now, put an A on P-34-M, capital A, in the area that still shows the scratch coat. A. Are you referring to the plasterer's first scratch coat?

Q. Yes. A. (Witness complied.)

Q. All right.

And put a B in the area that shows the plasterer's plumb coat. A. Right. (Witness complied.)

Q. And put a C in the area which shows the tile setter's setting bed. A. (Witness complied.)

Q. You did? A. Yes, sir.

Q. O.K.

Now, I show you P-34-N and ask you what that depicts? A. This depicts again the plasterer apprentice acting as a tile setter, and he is now setting the tile into the setting bed.

[1221] Q. That he would apply, that the tile setter would apply, is that what you mean? A. That's right, yes.

Q. And would the tile setter normally start in the middle of a wall, as we have it here? A. Oh, no, this again is just a mock-up, and it's to show what is happening.

Q. O.K. A. And the operations.

Q. Now, I show you what has been marked as P-34-O and ask you if you can tell me what this is, now? A. Yes, this shows a thin-set of mortar being applied over the plasterer's plumb coat, and that thin-set of mortar is the setting bed which is used to set the tile.

You have in this picture a first coat, a scratch coat, because of it being wire lath.

Q. Now, would you mark that with an A in the scratch coat? A. (Witness complied.)

Q. Now, who would put that coat on? A. The plasterer would apply that coat.

Q. All right.

Now, this picture is now depicting the thin-set method, is that right? A. Yes.

Q. Of installation of tile? [1222] A. Yes.

Q. All right.

Now put a B on the plasterer's plumb coat. A. (Witness complied.)

Q. And put a C on the thin-setting bed. A. (Witness complied.)

Q. O.K.

Now, we show that and apparently there is a piece of tile imbedded in the thin-setting material. A. That's right.

Q. O.K.

And the thin-setting bed material is the white part of the picture? A. That's right, it's material similar to Tec, L. & M. or Crest, or any of the other setting bed materials used to set tile.

Q. Now, I notice that C has, the white area, the thin-set material, as you called it, has a lot of lines in it. What caused those lines? A. It was put on with a serrated edge trowel.

Q. I see. O.K.

Now, I notice B is scratched. Is that— A. Well, there is a purpose for that because if the specifications were changed from a conventional method of setting tile to a thin-set method the scratch coat, the [1223] scratches were in there for the conventional tile.

Q. I see. A. Conventional method of setting tile. I wouldn't scratch it if it was going on a thin-set and you knew it beforehand.

Q. I see. A. But—

Mr. Shepherd: Can we see them when you get through?

Mr. Capuano: Yes.

Hearing Officer: These were introduced, or they were marked, they haven't been received as yet.

Mr. Capuano: Yes.

Hearing Officer: Do you want to receive them?

Mr. Capuano: Yes, I would. You know, I usually wait until the end, but I would like to move the admission, since I am going to have a lot of exhibits, I think it would be just as well to move their admission as we go along. I would like to move the admission of 32—

Hearing Officer: 34-A through -O.

Mr. Capuano: 34-A through -O.

Hearing Officer: Are there any objections to the receipt of these exhibits?

Miss Thacker: No objection.

Hearing Officer: They are received.

(The documents above-referred to, heretofore marked Plasterers' Exhibits Nos. 34-A through 34-O, were received in evidence.)

[1224] Mr. Capuano: May I use them? I want to ask him some more questions about them, if I may.

Miss Thacker: Do you want all of them?

Mr. Capuano: Yes, I would. I will give them right back. I am just going to ask a couple of questions.

Miss Thacker: Oh, I thought you were through.

Q. (By Mr. Capuano) Now, Mr. Power, looking at 34-N and -O, is there any difference in the work that the plasterers would perform up to the point of the tile setter putting in the setting bed, mortar setting bed, in 34-N and up to the point the tile setter putting in the setting bed in 34-O, other than the fact about the scratching, now, you told us about in 34-O? A. No.

Hearing Officer: Now, these are being offered to depict the procedure that is used up through the laying of tile?

Mr. Capuano: That's right.

Hearing Officer: It doesn't purport to show any skills or anything of that nature?

Mr. Capuano: No, it doesn't purport to show the skills.

The Witness: No.

Hearing Officer: O.K.

Q. (By Mr. Capuano) Now, are you familiar with the 1917 agreement in the green book? A. Yes, sir.

Q. That is in T-4. If you will get it out there.

[1225] Now, could you tell me whether the two methods we just described are included, are covered by that agreement, of setting tile, I mean? A. Yes, sir.

Q. And could you tell me on what you base that statement? A. Well, for the simple fact that the agreement

provides that the plasterers shall prepare all walls and ceilings which are to receive tile, and they have to plumb, rod and square the wall before the tile can be set.

Q. That would be thin-set as well as the conventional, then? A. Yes, sir, it would, because again the agreement specifically states that the plasterers shall plumb, rod and square the walls which are to receive tile.

Now, if they are going to stick tile over wallboard or some other material, he puts on his thin-set mortar bed, sticks his tile. We have no claim for it whatsoever.

Q. By he you mean the tile setter? A. Tile setter.

Q. Now, Mr. Power, are you a regular member of the Joint Board? A. Yes, sir, I am.

Q. We are talking about the National Joint Board for the Settlement of Jurisdictional Disputes, is that right? A. Yes, sir.

Q. When did you become a regular member? A. About twelve days ago.

[1226] Q. April 1? A. April 2, I think it was.

Q. Of 1967? A. Of this year, yes, sir.

Q. Now, since the reorganization of the Board have you served in any other capacity? A. I served as an alternate member.

Q. Now, could you tell me when the reorganization took place, approximately? A. It happened in a ceremony in the White House on February 2, 1965.

Q. All right.

And in connection with the reorganization of the Joint Board could you tell me what changes were made over the old board into the new board? A. Well, the old board required that a contractor in making an assignment of work was obliged to make his assignment in accordance with decisions of record, agreements of record, trade practice, and the area practice. That portion of making assignments was carried over to the rejuvenated board. However, the Joint Board in awarding a decision no longer was obligated to make decisions in accordance with decisions of record, agreements of record, trade practice, or prevailing practice, or area practice in the area.

Q. Now, do you mean in that order they no longer had to do it? [1227] A. That is correct. They were obligated to give consideration to the public and serve the best interests of the construction industry and give equal weight to efficiency and economy, and if any one of these four or five items I just mentioned was felt to be the method of resolving the picture, that would be their decision.

Q. And prior to the reorganization the Joint Board was required to go down the line using each one in order? A. Right, yes, sir.

Q. What would be the first one, decisions of record? A. Decisions of record, agreements of record. If there was no agreement of record then they would go to trade practice and if there was a gray area there they would go to area practice.

Q. And now they can use any one that they want? A. Any one that they want.

Q. O.K.

Now, was there any change in the number of members, board members? A. Yes, the Board was reduced from sixteen down to eight. There are four labor members on the Board, two regulars, two alternates, and there are four contractors on the Board, two from the A.G.C., and then from the specialty and mechanical trades, and that constitutes the Board. The alternate members—

Q. Wait. How many are on the Board now, eight or four [1228] A. Four. There's two regular and two alternate for each group.

Q. You mean two labor representatives and two employer representatives? A. Right, and each labor group has an alternate.

Q. And each employer group has an alternate? A. Has an alternate, yes, sir.

Q. So there are four regular members and four alternates? A. Yes, sir.

Q. Now— A. In other words, the Board was reduced from sixteen and a chairman down to eight and a chairman.

Q. Now, were there any other changes? A. Yes, there were.

Under the old system in case a disputant union was not satisfied with the decision of the National Joint Board they could request a reconsideration of the case or they could ask for an oral hearing, and they had to go back to the very same men who heard the case the first time.

Under the new formation of the Board they set up an Appeals Board which a local union who is still not satisfied with a decision of the Board can appeal to this Appeals Board. He still has the right, if he desires, to ask for reconsideration or an oral hearing from the Joint Board, but he has this added step, to take his case directly to the Appeals Board.

[1229] Q. And can employers appeal to the Appeals Board, too? A. Yes, sir.

Q. Who is the chairman of the Appeals Board? A. Mr. Dunlap, John Dunlap.

Q. Now, is he representing either management or labor on the Board? A. He is the impartial chairman of the Board.

Q. And how many other members are there? A. The same make-up as what constitutes the National Joint Board.

Q. O.K. A. Four from labor and four from management.

Q. Now, could you tell me generally how the disputes go before the Joint Board, or gets before the Joint Board? A. Yes, sir. A dispute arises in a given area. The local business agents are first to try to attempt to resolve this dispute, themselves. In the event the business representatives in that area are unable to resolve the dispute it is referred, then, to the International Association. Most international unions have a filing form which they require local unions to submit, which gives them the information regarding the dispute.

Once the filing form comes into our office, we then send a telegram to the other international union asking them

to assign a representative of their choosing to meet at the job site with the representative from our organization. And they [1230] go to the job site and try to attempt to adjust this dispute.

If they are unable to adjust the dispute, we are notified and we then take the case and process it before the National Joint Board. We do that by writing a letter to the Chairman of the Joint Board outlining in it in detail to him the name of the job, the contractors involved, and the basis of the dispute and the reason why we are claiming them, and asking him that he place that dispute on the agenda of the next meeting of the National Joint Board.

The Joint Board receives the dispute and the Chairman of the Board through his office then notifies the other international union that the union requesting the decision, that the union requesting the decision has asked for the decision to be placed on the agenda of the next meeting, and they are requested to submit their information regarding the dispute.

The Joint board Chairman of the Board again through his office personnel writes to the contractors involved, asking him, or them, the general contractor and the prime contractor, for their position regarding the dispute.

So that you have, then, all interested parties to the dispute having the opportunity to present their position before the Joint Board.

Q. Now, would the Joint Board notify an employer who was not bound by the Joint Board procedures? A. Yes, they would.

[1231] Q. Now, your union, is that bound by the Joint Board? A. Yes, it is.

Q. Do you know whether the B. M. & P. I. U. is bound by the Joint Board? A. Yes, they are, and all unions affiliated with the Building and Construction Trades Department are bound by it.

Mr. Capuano: Would you mark this, please?

(The document above-referred to was marked Plasterers' Exhibit No. 35 for identification.)

Q. (By Mr. Capuano) I show you what has been marked P-35 and ask you if you can tell me what that is. A. This is the Constitution of the Building and Construction Trades Department of the AFL-CIO.

Q. Now, could you tell me why you say all unions affiliated with the Building Trades Department are bound by the Joint Board? A. Yes, because Article X in the Constitution of the Building and Construction Trades Department requires that any organization affiliated with the Department must use the National Joint Board as its vehicle to resolve disputes. I don't have the exact phraseology, but when I find it I can give it to you.

Q. Page 28, is that right? A. That's right.

Q. All right.

Now, could you tell me if the Joint Board will decide a [1232] dispute, jurisdictional dispute, between two unions even if the employers are not bound or stipulated? A. Yes, they will because the local unions affiliated with the International Unions are stipulated to abide by the provisions of the National Joint Board for the Settlement of Jurisdictional Disputes.

Q. In accordance with what you just quoted from the Buildings Trades Constitution— A. Yes, sir.

Q. —or stated about it? A. Yes, sir.

Q. Now, you mentioned earlier decisions of record and agreements of record.

Would you take decisions of record first and tell me what they are? A. Well, decisions of record are applicable to all crafts. Agreements of record are only applicable to the two unions involved.

Q. And are agreements of record and decisions of record published any place? A. They are published in what is known as the Green Book.

Q. So would you look on page 104 of T-4? Do you see it? A. Yes, sir.

Q. Is that the decision of February 21, 1924? A. Yes, sir, it is.

[1233] Q. And that is the decision we have been discussing here during this case? A. Yes, sir.

Q. And is that what you just described as a decision of record? A. That is what is known as a decision of record.

Q. And the 1917 agreement on Page 32 would be what? A. An agreement of record applicable only to the B. M. & P. I. U. and the O. P. & C. M. I. A.

Q. Now, would you be able to tell me approximately how many cases the Joint Board decides in a year, average year, say, since the reorganization? A. About four hundred cases a year.

Q. They render four hundred decisions, then? A. Yes, sir.

Q. Now, are there any revisions on your voting in a case in which your union is involved? A. I have no vote. I can't be in the room.

Q. Could you explain this a little more for me, please? A. Yes, if our organization is involved in a dispute and I am a member of the Joint Board, I would be allowed to present our side of the case to the National Joint Board along with a representative of the other disputing craft.

Q. What do you mean, in an oral argument type? A. In an oral argument, in oral argument. And after both [1234] sides have been heard and rebuttals have been heard, we then would be ordered out of the room while the other members of the Board vote.

Q. And if you have a case, do one of the alternates then sit in your place if you are a regular member? A. Yes, sir, they do.

Q. And I assume when you were an alternate you did the same thing, sat in for regular members whose unions had cases? A. That's right. An alternate has no vote. It's only the regular members that vote.

Q. I see. Does an alternate have a vote when he sits in for a regular member? A. Oh, yes, he moves up then.

Q. If a union who had a regular member on the Board had a dispute the regular member would not vote on it

but one of the labor alternates would take his place for that case— A. That's right.

Q. —is that what you are saying? A. Yes, sir.

Q. Now, you say you have just been made a regular member April 1st. A. Right.

Q. Is that membership permanent? A. No, it's not. They rotate the members.

Q. Among whom? [1235] A. Among the contractors side and the labor's side.

Q. You mean from different unions? A. Different unions.

Q. Now, other than the two alternates that you just mentioned as being on the labor side, are there any other alternates? A. Yes, there are, the president of the Building Trades Department submits a list of other international unions and names of representatives which have been given to him by the general president of that organization to be ready in the event an alternate or regular member didn't appear, and there wouldn't be a quorum for that date.

There is also on the contractors side the very same thing, a list of names of alternates who would take the place in the event the alternate or regular member of that group would be absent or out of the city or unable to attend for some reason.

Q. In other words, you mean if the regular members and the alternates, say, on the labor side, if both the regular member and alternate member couldn't be there one of these additional alternates would take his place? A. Yes, sir.

Q. Now, do you know whether there is any person in the B.M.P.I.U. who serves as one of these alternates? A. They have a representative, the B.M.P.I.U. has a representative serve from time to time.

[1236] Q. Who is that? A. Mr. Conners.

Q. What is his position? A. The secretary-treasurer.

Q. And do you know if he has in fact served on the Board as an alternate? A. Yes, he has.

* * * * * * * * * * *

[1237] Q. (By Mr. Capuano) Mr. Power, did your union submit a dispute to the National Joint Board in connection with the Anderson Library job at the University of Houston? A. Yes, sir, we did.

Q. Now, I am going to show you a group of exhibits, P-36-A through -U, and they go in chronological order with the oldest on the bottom. And I will ask you if you can just look at that set of exhibits and tell me what it is. Keep them in order, would you, please? A. It is the file from the National Joint Board.

Q. Is that the full Joint Board file? A. I would say so.

Q. On what case? A. On the University Science Building, Anderson Library.

[1238] Q. O.K.

Now, when did the Joint Board make its initial decision in this case? A. I believe it was, it's in the file here, but I believe it was on the 9th that they made the decision.

Q. 9th of what? A. November.

Q. '66? A. Yes, sir.

Q. It would probably be towards the bottom of the pile. A. I will check the date.

It was on the 9th of November, 1966, in a letter sent out dated November 10th.

Q. And that is P-36-F, is that right? A. Yes, sir.

Q. All right.

Now, after that decision did you have any correspondence or did your union have any correspondence with the Joint Board concerning compliance with the decision? A. Yes, we did.

Q. Let me ask you this first, in whose favor was the Joint Board's decision of November 10th? A. In favor of the Plasterers.

Q. All right.

And later did you have correspondence with the Joint Board [1239] concerning compliance? A. Yes, we did.

Q. And what was the reason for that? A. Well, there's a telegram in here in this file, but without even reading

it in essence it said they were complying with the decision rendered by the Joint Board.

Q. Who said that, who sent the telegram? A. McHargue, I think, is his name.

Q. Prior to McHargue's telegram did the O.P. have any correspondence with the Joint Board concerning compliance with the decision? A. Well, it was because of the telegram and complaints from our Local Union that they were not complying with the decision that we then wired the National Joint Board several times to tell them that they were not complying, to again direct the contractor and the local union to comply with the decision of record.

This wasn't done, and this brought about the results of we, then, because of the telegram sent by McHargue, asked for a clarification of the decision.

Q. All right.

Now, are the various telegrams that you sent to the Joint Board included within this file that you have in front of you? A. I believe they are.

Q. And is McHargue's telegram in there, too? [1240] A. I believe it is. Here is our telegram requesting the clarification.

Q. Which exhibit is that? A. Exhibit 36-Q.

Q. All right. A. Then here is our telegram stating that they are in compliance.

Q. They were in compliance? A. That they were not in compliance. We notified the Board that the telegram that they had received from Mr. McHague indicating the Tile Setters 20 contends they are not in compliance is in error and erroneous, and we asked the Board on the date indicated on the telegram that the Board direct the contractor and Tile Layers Local 20 to abide by the decision rendered on November 9 which was to the Plasterers.

Q. And you are reading from what exhibit number? A. P-36-O.

There is that telegram from McHargue (indicating).

Q. The telegram from McHargue you were referring to is what exhibit number? A. 36-L.

Q. P-36-L? A. P-36-L.

Q. All right.

Now, after you sent your telegram to the Joint Board [1241] requesting a clarification of the decision did you send a letter to the Joint Board as a follow-up to that telegram? A. Yes.

Q. Is the letter included in that file? A. Yes, here it is, and that is marked Exhibit 36-T.

Q. And what is the date of that letter? A. The date of that letter is March 13, 1967.

Q. All right.

And then do you know if after that letter was sent to the Joint Board the Joint Board considered its previous decision? A. Yes, it clarified it.

Q. Was that a meeting of the Joint Board? A. Yes, it was a meeting of the Joint Board.

Q. And then did the Joint Board—well, they did render a decision on March 15, right? A. That's right.

Q. And that is also in this file? A. Yes, sir, it is.

Q. And that is marked as— A. P-36-U.

Q. All right.

Now, do you know if the B. M. P. I. U. submitted any correspondence to the Joint Board in connection with this dispute on the Anderson Library? A. Yes, they did.

[1242] Q. Is that included in the field? A. Yes, it is, and it's marked 36-E.

Q. P-36-E? A. P-36-E.

Q. All right.

And when the Joint Board originally considered that dispute in November do you know if any representative of the B. M. P. I. U. appeared before the Board to argue their position? A. Yes, they did have a representative present to argue their position.

Q. Did the O. P. have a representative to argue their position? A. Yes, the O. P. did have a representative present to argue their position.

Q. Did you vote on that case in the original decision in November? A. I did not.

Q. Now, at the meeting in which the Joint Board clarified its decision, that is, the March 15 letter, P-36-U, do you know if the B. M. had a representative at the meeting of the Joint Board which resulted in that March 15 clarification? A. Yes, they did have a representative present.

Q. Did he argue the B. M.'s position? A. Yes, he did. [1243] Q. Did the O. P. have a representative present? A. Yes, they did.

Q. Did he argue their position? A. Yes, he did.

Q. Did you vote in that decision? A. Absolutely not.

Q. And I am speaking of the clarification there. A. Absolutely not.

Q. Now, did the March 15 clarification change or alter the original decisison of the Board or change the award to another craft? A. It did not.

Q. The award was still to the Plasterers? A. The award was still to the plasterers, clarifying its decision of November 9th.

Q. All right.

Now, was this file that you have in front of you obtained from the Joint Board, itself? A. Yes, it was.

Q. Could you tell me, are those files available, the Joint Board files? A. They are available to anybody, anyone affected with the dispute after the case is decided.

Q. All right.

Now, we talked about an appeals board earlier. Do you know [1244] if the B. M. P. I. U. filed an appeal with the Appeals Board from either the November, or let me ask this, did the B. M. file an appeal to the Appeals Board from the November 9th decision? A. They did not.

Q. Did they file an appeal to the Appeals Board from the March 15 decision? A. They did not.

Q. Or clarification, I should say.

And are there time limits in which you must file an appeal? A. Yes, there is.

Q. What is the time limit? A. Ten days.

Q. After the decision? A. Right.

Q. So the time has elapsed on both, then? A. That's right. I might point out, when I file for an appeal the contractor who has made the assignment keeps his assignment in effect.

Q. He would keep his regular assignment in effect? A. Keeps his assignment in effect pending the decisison of the Appeals Board. If they accept the appeal the assignment continues as is even though the Appeals Board had awarded the work to the Plasterers.

Q. Do you know if the B. M. asked the Joint Board for [1245] reconsideration of either of its two— A. They did not.

Q. O.K.

I am speaking of either the November 10th decision or March 15 clarification. A. They did not.

* * * * * * * * * *

[1255] Q. Now, do you know of any place in the rules or in the green book that gives the Board the right or the power to make that contractual agreement between the parties? A. Well, the Board interprets these agreements, and they have to do it in light of the changes that go into a building today. I might give you an example. For example, say water was running through a plastic pipe instead of a galvanized or copper pipe. Would they say or anybody else say that this wouldn't be the plumber that would put that pipe in? Would some other organization then come up and state that "I am going to claim it because it's not pipe"?

* * * * * * * * * *

[1256] Q. You are not aware of any, then, that gives them the power to add to or delete from a contract between two unions? A. I don't know where it would be in the green book or rules or regulations. All I can say is what I said to you a few minutes ago, that the Board has to interpret agreements in light of the technological changes that exist today in the building and construction industry.

* * * * * * * * * *

[1261] Q. But now I am not asking you whether they will or not. I am asking you what the Board says the responsibility of the plasterer is. The Board has deleted that word which we contractually agreed on, is that right? A. Yes, ma'am.

Q. All right. A. But you also have to remember that this is a function that is set out in this agreement, what the plasterers will do.

Q. In the green book, you are referring to? A. Right. Scratching is a function. Plumbing is a function.

Q. Yes. A. Rodding is a function.

Q. Right. A. Squaring is a function.

Q. That's right. A. And the tile setter on his end of it will set his final setting bed.

Q. That's right.

Didn't you say scratching was a function, as well? Didn't ~~you~~ name it, four of them, again? A. I will repeat it for you. I said one of the functions [1262] was scratching.

Q. I though you did. All right. A. Another function is plumbing. Another one is rodding. And another one is squaring the walls.

Q. All right.

Now, then we are in agreement, you and I, that there has been added to the contractual agreement between the parties by the Board in telling the tile setter when he is to put his tile on? Are you and I in agreement on that? That has been an addition to the agreement. A. The Joint Board's decision is very clear.

Q. Now, Mr. Power—

Mr. Capuano: I think he was starting to answer, if you will let him go.

Q. (By Miss Thacker) —answer my question. A. Again, the Joint Board decision was very clear. It stated the work in dispute is covered by the agreement of record of August 22, 1917 and shall be assigned to plasterers except that any coat to be applied wet the same day under the tile shall be placed by the tile setters.

Q. Now, are we in agreement that the time the tile setter is to put his tile on is not contained in the 1917 agreement? A. No, it's not contained in the 1917 agreement.

Q. All right.

And you and I are in agreement that these are additions [1263] in the Board's decision of November '66 and March '67, you agree with me on it? A. That these functions of plumbing, rodding and scratching—

Q. No, I am on the tile setter's part now, that when he can set his tile has been introduced to us in these two decision letters is an addition from the contract between your union and ours? A. I personally don't believe so.

Q. Well, now, show me, then, in the 1917 agreement where— A. This is getting to be a matter of semantics. It's what interpretation you are placing on it.

Q. No. A. The agreement is very clear. It sets out the functions of both organizations of what to do, and as I said before, that I am sure that any agreement in any organization in this green book, that the members on the Board would have to consider the changes in the building construction and determine where it's affected and where it's not.

* * * * * * * * * *

[1266] * * In this method back here he had his setting bed and his float coat. Could he put his tile on that? A. On his setting bed?

Q. Directly, with nothing? A. He could if he wanted to.

Q. He used a neat cement, didn't he, a dope coat, didn't he? A. He did.

Q. All right.

[1267] He is doing the same thing today, isn't he, except there are a few more things on the market that he might use, but he still may use a dope coat, a neat cement, a mastic, an adhesive, a dry-set, to have his tile adhere to his setting bed? A. His setting bed is the Tec, the L.&M. or dry-set materials that you are talking about.

Q. In your opinion?

Mr. Capuano: Well, he is the man on the stand.

Q. (By Miss Thacker). Is that right, Mr. Power? A. Yes, ma'am.

Q. In your opinion you are saying that it is. A. Yes, ma'am. You can take this wall right alongside me here, and give me a piece of tile and I will take the tile, go over to that wall, put it up to it. It will fall right to the floor. In order for you to set your tile you have got to put on this thin-set material and that is what sets your tile to the wall.

* * * * * * * * * *

[1319] L. D. McHARGUE

recalled as a witness by and on behalf of the Tile Setters, having been previously sworn, was examined and testified further as follows:

* * * * * * * * * *

Direct Examination

Q. (By Miss Thacker) Now, you have heard the testimony given. Can you recall any particular job that has been stated as being a thin-set method that you know is not? [1320] A. Yes, I believe yesterday Mr. Saylors made the statement that they browned out the T.S.U. Library addition for the thin-set method, and I know for a fact that we or I, myself, floated these walls and put them up in a conventional manner.

* * * * * * * * * *

[1321] VICTOR ZAMBON

was called as a witness by and on behalf of the Tile Setters and, having been first duly sworn, was examined and testified as follows:

* * * * * * * * * *

Direct Examination

Q. (By Miss Thacker) Mr. Zambon, did you hear testimony given by the Respondent stating that it was a thinset on the Humble garage? A. It was float coat on the Humble garage.

Q. Did the Texas State Tile & Terrazzo do this job? A. Yes, ma'am.

* * * * * * * * * * *

EXHIBITS

Plasterers' Exhibit No. 3

NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES BUILDING AND CONSTRUCTION INDUSTRY
815 Sixteenth, Street, N. W., Washington, D. C. 20006
STerling 3-6817

November 10, 1966

In Reply Refer to: TEXAS 11/9/66

EDWARD J. LEONARD, General President
Operative Plasterers' and Cement
Masons International Association
1125 Seventeenth Street N W
Washington, D C 20036

THOMAS MURPHY, General President
Bricklayers Masons and Plasterers
International Union
Bowen Building
Washington, D C

SOUTHWESTERN CONSTRUCTION COMPANY
Contractor
P O Box 1204
Houston, Texas 77001

TEXAS STATE TILE AND TERRAZZO COMPANY
Subcontractor
3115 Golfcrest
Houston, Texas

Gentlemen:

At its meeting November 9, 1966, the Joint Board considered the jurisdictional dispute between the Operative Plasterers' and Cement Masons International Association

and the Bricklayers Masons and Plasterers International Union over the plumbing, rodding and squaring of walls which are to receive tile, Houston University Science Building, Houston Texas, Southwestern Construction Company contractor, Texas State Tile and Terrazzo Company subcontractor.

The Joint Board voted to make the following job decision: The work in dispute is governed by the agreement of August 22, 1917, and shall be assigned to plasterers, except that any coat to be applied wet the same day under tile shall be placed by tile setters. In the thin-set or adhesive method of applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar that is the scratch coat and plumb coat. The plasterers shall plumb, rod, and square all walls, rod and level all ceilings and the tile setter shall apply the final setting bed for his tile.

This action of the Joint Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

WILLIAM J. COUR
William J. Cour
Chairman

WJC/lma

cc: C J HAGGERTY—B&CT DEPT
DALE WITCRAFT—AGC

* * * * * * * * * * *

Plasterers' Exhibit No. 9

GENERAL CONTRACT SPECIFICATIONS

Job—No. 1292

Additions To The
M. D. ANDERSON
LIBRARY

University of Houston
Houston, Texas

January 27, 1965

DIVISION NO. 14

Furring, Lathing And Plastering

14-6 Workmanship

(a) All work shall be executed by skilled workmen in such a manner as to fulfill the requirements of the Drawings and these Specifications.

14-11 Temperature and Ventilation (ASA)

(a) In cold weather, a uniform temperature of not less than 55°F and not more than 80°F shall be continuously maintained in the building for a week before the application of plaster, continuing during plastering operations and after the plaster is dry. The heat shall be well distributed in all areas, and deflective or protective screens shall be used to prevent concentrated or uneven heat on plaster areas near the heat source. Where required, heat shall be furnished by the General Contractor.

14-19 Guarantee

(a) This Contractor shall, as a part of his Contract, furnish a written guarantee warranting all work executed under this Division against popping, checking, discoloring, falling off or becoming otherwise defective for a period of

one (1) year from and after completion and acceptance of the work as evidenced by date of final payment and binding himself to repair or replace, without additional compensation beyond the contract amount, any defect which may develop within that period, when ordered to do so by either Owner or Architect.

DIVISION NO. 15

Precast Terrazzo & Tile Work And Marble Work

15-1 General Conditions

(a) The current edition of "The General Conditions of the Contract" as published by The American Institute of Architects together with the Supplemental General Conditions, Pages 1-1 to 1-16 as specified under Division 1 of these Specifications, shall be considered as a part of this Division of the Specification, insofar as they may be termed applicable, whether attached hereto or not.

(b) Should the General Contractor desire to sublet the work included under this Division of the Specifications and also include in this Subcontract additional items of work that are specified under other Divisions of the Specifications, it shall be the responsibility of the General Contractor to adequately designate these additional items of work to the Sub-Bidders at the time that he requests proposals from them.

15-2 Scope

(a) The work under this Division of the Specifications shall include all labor, materials, equipment and appurtenant accessories necessary for, or incidental to, the completion of all ceramic tile work as indicated or reasonably implied by the Drawings and as specified herein. Precast terrazzo and marble work shall also be included in this Division.

15-3 Samples

(a) Contractor must furnish samples for the Architect's approval before purchasing any material.

15-4 Preparatory Work

(a) This Contractor shall, as a part of this Contract, examine all preparatory work and report to the Architect or General Contractor any defects or imperfections which, in his opinion, would prevent the satisfactory completion or permanency of his work. Failure to make such an inspection and report will be construed as an acceptance of preparatory work and later defects will not relieve this Contractor of his responsibility under the Guarantee.

15-5 Materials

(a) Floor tile shall be 1-9/16" x 1-9/16" unglazed ceramic floor tile in colors selected by the Architect.

(b) Toilet wall tile to be 4¼" x 4¼" dull mat square edge Hermosa with cove base. Salient angles to be bullnosed, interior angles coved.

(c) Setting bed shall be composed of mortar made from one (1) part Portland cement and three (3) parts sand with two (2) pounds of Master Builder's "Stearox 100" added to each sack of cement in accordance with the directions of the manufacturer.

(d) Tile for stairs to be 6" x 6" x ½" Quarry tile as manufactured by the Carlyle Tile Company.

(e) Tile for window stools to be the same as above except one edge (nosing) of tiles to be finished and have small Champer on bottom corner as shown on the Contract Drawings.

15-6 Laying Tile

(a) The mortar shall be spread until the surface of the mortar setting bed is in true even planes. Set temporary screed clips as guides to assure these results. Only as large an area as can be covered with tile before the mor-

tar has reached its initial set shall be placed in one operation.

(b) All tiles must be firmly secured in place, joints must be well filled, and lines must be kept straight and true, and all finish surfaces brought to true level planes. The completed work must be free from chipped edges.

(c) As soon as mortar setting bed has sufficiently hardened, floor tile shall be grouted with Portland Cement colored to match tile. The grout must be forced into the joints. Sprinkle with dry cement and finish flush and true. All surplus grouting shall be removed and the face of the tile left clean.

(d) Upon completion of the work, the tile Contractor shall remove all unused materials, rubbish, etc., in connection with his contract and shall give the tile a thorough cleaning.

15-11 Guarantee

(a) The undertaking of this Subcontract constitutes the issuance of a guarantee to replace any defective workmanship or material that may occur during a period of one (1) year from date of final payment.

* * * * * * * * * *

Plasterers' Exhibit 35

Organized February 10, 1908

CONSTITUTION OF THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT AFL-CIO 1966

Amended December, 1965

* * * * * * * * * * *

ARTICLE II

Objects and Principles

The objects and principles of this body are:

* * * * * * * * * * *

6. To secure the adjustment of trade and jurisdictional disputes in the building and construction trades industry along practical lines as they may arise from time to time; and such decisions to be final and binding on all affiliated National and International Unions and their affiliated Local Unions.

* * * * * * * * * * *

12. To protect National or International Unions affiliated with the Department in their established trade jurisdiction in the building and construction trades industry as historically granted and conferred upon them by the American Federation of Labor and as traditionally exercised by them.

* * * * * * * * * * *

ARTICLE X

Jurisdictional Disputes

All jurisdictional disputes between or among affiliated National and International Unions and their affiliated Local Unions and employers shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure adopted in the future by the De-

partment for the settlement of jurisdictional disputes. Said present plan or any other plan adopted in the future shall be recognized as final and binding upon the Department and upon all affiliated National or International Unions and their affiliated Local Unions.

P-36A

Plasterers' Exhibit 36

OPERATIVES PLASTERERS' AND CEMENT MASONS'
International Association of the United States and Canada

October 27, 1966

Mr. William J. Cour, Chairman
National Joint Board for Settlement of
Jurisdictional Disputes
815 - 16th Street, N.W.
Washington, D.C. 20006

Re: Dispute between our members and the B.M. & P.I.U. (Tile Setters) over the plumbing, rodding and squaring of walls which are to receive tile on the Houston University Science Building, Cullen Boulevard, Houston, Texas. Southwestern Construction Company, P. O. Box 1204, Houston, Texas 77001, General Contractor, Texas State Tile and Terrazzo Company, 3115 Golfcrest, Houston, Texas, Subcontractor.

Dear Mr. Cour:

Effiorts to resolve the above-mentioned dispute have failed; therefore, it necessitates the submission of this case to the National Joint Board for Settlement of Jurisdictional Disputes. The work in dispute has historically been performed by Plasterers and the Joint Board has rendered many, many decisions to this effect.

The work in dispute is covered by an Agreement of Record which appears on pages 32 and 33 of the Green Book and

is further covered by a Decision of Record which appears on page 104 of the Green Book. We, therefore, respectfully request that the National Joint Board once again rule that the work in dispute rightfully comes under the jurisdiction of the Plasterer members of this International Association.

Very truly yours,

EDWARD J. LEONARD
Edward J. Leonard
General President

EJL
lah
P-36B

October 28, 1966

TEXAS 10/28/66

Southwestern Construction Company
Contractor
P O Box 1204
Houston, Texas 77001

Texas State Tile and Terrazzo Company
Subcontractor
3115 Golfcrest
Houston, Texas

Gentlemen:

This office has been advised of a jurisdictional dispute between the Operative Plasterers and Cement Masons International Association and the Bricklayers Masons and Plasterers International Union over the plumbing, rodding and squaring of walls which are to receive tile, Houston University, Science Building, Cullen Boulevard, Houston, Texas, Southwestern Construction Company contractor, Texas State Tile and Terrazzo Company subcontractor.

Please send a full and complete description of the work in dispute, including if possible pictures or prints, to this office by November 4, 1966.

Very truly yours,

WILLIAM J COUR
Chairman

WJC/lma
cc: Dale Witcraft—AGC
P-36C

October 28, 1966

TEXAS 10/28/66

Thomas Murphy, General President
Bricklayers Masons and Plasterers
International Union
Bowen Building
Washington, D.C.

Dear Mr. Murphy:

President Leonard has requested a job decision in a jurisdictional dispute between the Operative Plasterers and Cement Masons International Association and the Bricklayers Masons and Plasterers International Union over the plumbing, rodding and squaring of walls which are to receive tile, Houston University Science Building, Cullen Boulevard, Houston, Texas, Southwestern Construction Company contractor, Texas State Tile and Terrazzo Company subcontractor.

May I have your position with regard to the work in dispute by November 4, 1966.

Very truly yours,

WILLIAM J COUR
Chairman

WJC/lma

cc: E J Leonard—Cement Masons

P-36D

TELEGRAM

SHA112 (57) NSA156 DD140
D HSC212 PD HOUSTON TEX 1 1200P CST
NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES BLDG AND CONSTRUCTION INDUSTRY ATTN WILLIAM J COUR 815 16 ST NORTHWEST PHONE ST 36817 WASHDC
RE HOUSTON UNIVERSITY SCIENCE BUILDING YOUR LETTER OCTOBER 28 1966 TO SOUTHWESTERN CONSTRUCTION CO AND TEXAS STATE TILE AND TERRAZZO INC BE ADVISED WE ARE NOT STIPULATED WITH THE NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES BUILDING AND CONSTRUCTION INDUSTRY WE DESIRE TO MAKE THIS WORK ASSIGNMENT DISPUTE UNDER SECTION 10(K) OF TAFT ACT BEFORE THE NATIONAL LABOR RELATIONS BOARD
G ZAMBON TEXAS STATE TILE AND TERRAZZO INC 28 1966 10(K)
(16).

P-36E

BRICKLAYERS, MASONS AND PLASTERERS
INTERNATIONAL UNION OF AMERICA

1 November 1966

Mr. William J. Cour, Chairman
National Joint Board for Settlement
of Jurisdictional Disputes
815 Sixteenth Street, N.W.
Washington, D.C. 20006

Dear Mr. Cour:

This is in reply to your letter of October 28 (TEXAS 10/28/66) advising President Leonard has requested a job decision in the jurisdictional dispute between the Plas-

terers and the Bricklayers over the plumbing, rodding and squaring of walls which are to receive tile at the Houston University Science Building, Cullen Boulevard, Houston, Texas. Southwestern Construction Company, contractor; Texas State Tile and Terrazzo Company, subcontractor.

We have given our position in this matter in dozens of pieces of correspondence, and there has never been a change in our position that the tilelayer should be accorded the right to prepare the walls for the setting of tile. This would include the application of the float coat which is a part of the so-called setting bed.

The agreement of August 22, 1917, relates to the preparation of walls, and at that time there was only one known method for the installation of tile, which was the conventional application of a coat that was to be scratched by the plasterer to guarantee adhesion of the final coat which was to be put on by the tilelayer to act as a bed for the tile.

We, once again, respectfully request the Joint Board render job decisions in accordance with the 1917 agreement, using the same language which specifically guarantees the tilelayer the right to apply the setting bed.

Yours very truly,

GEORGE KING
George King
First Vice President

GK:rd

P-36F

November 10, 1966

TEXAS 11/9/66

Edward J Leonard, General President
Operative Plasterers' and Cement
Masons International Association
1125 Seventeenth Street N W
Washington, D C 20036

Thomas Murphy, General President
Bricklayers Masons and Plasterers
International Union
Bowen Building
Washington, D C

Southwestern Construction Company
Contractor
P O Box 1204
Houston, Texas 77001

Texas State Tile and Terrazzo Company
Subcontractor
3115 Golfcrest
Houston, Texas

Gentlemen:

At its meeting November 9, 1966, the Joint Board considered the jurisdictional dispute between the Operative Plasterers' and Cement Masons International Association and the Bricklayers Masons and Plasterers International Union over the plumbing, rodding and squaring of walls which are to receive tile, Houston University Science Building, Houston, Texas, Southwestern Construction Company contractor, Texas State Tile and Terrazzo Company subcontractor.

The Joint Board voted to make the following job decision: The work in dispute is governed by the agreement of August 22, 1917, and shall be assigned to plasterers, except that any coat to be applied wet the same day under tile shall be placed by tile setters. In the thin-set or adhe-

sive method of applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar that is the scratch coat and plumb coat. The plasterers shall plumb, rod, and square all walls, rod and level all ceilings and the tile setter shall apply the final setting bed for his tile.

This action of the Joint Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

WILLIAM J COUR
Chairman

WJC/lma
cc: C J Haggerty—B&CT Dept
Dale Witcraft—AGC

P-36G

TELEGRAM

LLG 012 (47) NSA004
SSJ680 NS HSA101 NL PD HOUSTON TEX 24
NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES BUILDING AND CONSTN INDUSTRIES 815 16 ST NW FONE ST36817
ATTN WILLIAM J COUR WASHDC
REFERENCE OUR WIRE NOV FIRST 1966 JOB REFERENCE ERRONEOUS WIRE SHOULD HAVE READ QUOTE REFERENCE M D ANDERSO LIBRARY UNIVERSITY OF HOUSTON YOUR LETTER OCT 28, 1966 TO SOUTHWESTERN CONSTRUCTION COMPANY IN TEXAS STATE TILE AND TERRAZZO INC BE ADVISED WE ARE NOT STIPULATED WITH THE NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES BUILDING AND CONSTRUCTION INDUSTRY WE DESIRE TO MAKE THIS WORK ASSIGNMENT DISPUTE UNDER SECTION 10(K of TAFT ACT BEFORE THE NATIONAL

RELATIONS LABOR BOARD TEXAS STATE TILE AND TERRAZZO INC 3115 GULFCREST BLVD HOUSTON.

P-36H

TELEGRAM

SHA033(09) CTA 264
WG094 WW RBA086 DL PD EX FAX RB WASHINGTON DC 26 1156A
EST
WM J COUR, CHAIRMAN, NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES
815 16TH ST NORTHWEST WASHDC
RE TEXAS 11/9/66—AT ITS MEETING NOVEMBER 9, 1966 THE JOINT BOARD CONSIDERED DISPUTE BETWEEN PLASTERERS AND BRICKLAYERS OVER PLUMBING; RODDING AND SQUARING OF WALLS WHICH ARE TO RECEIVE TILE ON HOUSTON UNIVERSITY SCIENCE BUILDING, CULLEN BOULEVARD, HOUSTON, TEXAS, SOUTHWESTERN CONSTRUCTION COMPANY CONTRACTOR, TEXAS STATE TILE AND TERRAZZO COMPANY, SUBCONTRACTOR. THE JOINT BOARD VOTED THAT THE WORK IN DISPUTE WAS THE WORK OF THE PLASTERERS. CONTRACTOR AND TILE SETTERS REFUSE TO ABIDE BY THE DECISION. WE THEREFORE RESPECTFULLY REQUEST THAT YOU DIRECT THE CONTRACTOR AND THE B M & P I U TO ABIDE BY THE DECISION RENDERED BY THE NATIONAL JOINT BOARD ON NOVEMBER 9, 1966

TELEGRAM
[continued]

EDWARD J LEONARD GENERAL PRESIDENT, OP& CMIA
11/9/66 9 1966 9 1966
P&CMIA
(20).

P-36I

January 27, 1967

TEXAS 11/9/67

Thomas Murphy, General President
Bricklayers, Masons and Plasterers
International Union
Bowen Building
Washington, D C

Southwestern Construction Company
Contractor
P O Box 1204
Houston, Texas 77001

Texas State Tile and Terrazzo Company
Subcontractor
3115 Golfcrest
Houston, Texas

Gentlemen:

With further to our file Texas 11/9/66, the following telegram has been received from President Leonard:

> "Re Texas 11/9/66—At its meeting November 9, 1966 the Joint Board considered dispute between Plasterers and Bricklayers over plumbing, rodding and squaring of walls which are to receive tile on Houston University Science Building, Cullen Boulevard, Houston, Texas, Southwestern Construction Company contractor, Texas State Tile and Terrazzo Company subcontractor. The Joint Board voted that the work in dispute was the work of the Plasterers. Contractor and Tile Setters refuse to abide by the decision. We therefore respectfully request that you direct the contractor and the B M & P I U to abide by the decision rendered by the National Joint Board on November 9, 1966."

Contractor is directed to comply with the Joint Board job decision of November 9, 1966.

President Moreschi is requested to instruct the local union to comply with this Joint Board job decision.

Very truly yours,

WILLIAM J COUR
Chairman

WJC/lma

cc: E J Leonard—Tile Setters
D R Witcraft—AGC

P-36L

TELEGRAM

SHA028 (46) BB040
NSA080 NS HSD029 D HOUSTON TEX 2 854ACST
WILLIAM J COUR CHAIRMAN
NATIONAL JOINT BOARD 815 16TH ST NORTH-WEST WASHDC
REGARDING TEXAS 11-9-67 TILE LAYERS LOCAL 20 CONTENDS WE ARE IN COMPLIANCE WITH RULING WHICH STATED THE FINAL FLOAT COAT WOULD BE WORK OF THE TILE LAYERS AND THIS IS ALL WE ARE DOING. THANK YOU VERY MUCH
L D MCHARGUE SECRETARY
11-9-67 20

(18)

P-36O

TELEGRAM

SHA071 (56) CTA347
WF299 WW RBB031 DL PD FAX RB WASHINGTON DC 9 1105A EST
WM J COUR, CHMN NATL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES
815 16TH ST NW WASHDC
RE TEXAS 11/9/66 ON FEBRUARY 2, 1967 YOU SENT US A LETTER QUOTING A TELEGRAM YOU HAD

RECEIVED FROM L D MCHARGUE WHO INDICATES THAT TILE LAYERS' LOCAL 20 CONTENDS THAT THEY ARE IN COMPLIANCE WITH THE DECISION RENDERED BY THE JOINT BOARD ON NOVEMBER 9, 1966 WHICH AWARDED THE PLUMBING, RODDING AND SQUARING OF WALLS WHICH ARE TO RECEIVE TILE ON THE HOUSTON UNIVERSITY SCIENCE BUILDING, HOUSTON TEXAS, TO THE PLASTERERS. THE CONTENTS OF THE TELEGRAM RECEIVED FROM SECRETARY MCHARGUE ARE ERRONEOUS. AS OF THIS DATE WE WISH TO ADVISE YOU THAT THE CONTACTOR AND TILE LAYERS LOCAL 20 ARE NOT ABIDING BY THE DECISION RENDERED ON NOVEMBER 9, 1966

TELEGRAM
[continued]

WE RESPECTFULLY REQUEST THAT SOUTHWESTERN CONSTRUCTION COMPANY CONTRACTOR, PO BOX 1204, HOUSTON TEXAS 77001, Texas State Tile and .Terrazzo Company Subcontractor, 3115 Golfcrest, HOUSTON TEXAS AND TILE LAYERS LOCAL 20 BE DIRECTED TO IMMEDIATELY COMPLY WITH THE DECISION RENDERED NOVEMBER 9, 1966
EDWARD J LEONARD GENERAL PRESIDENT OP& CMIA

(20).

P-36P

P-36P

February 10, 1967

TEXAS 11/966

Thomas Murphy General President
Bricklayers, Masons and Plasterers
International Union
Bowen Building
Washington D C

Southwestern Construction Company
Contractor
P O Box 1204
Houston Texas 77001

Texas State Tile and Terrazzo Company
Subcontractor
3115 Golfcrest
Houston Texas

Gentlemen:

With further reference to our file Texas 11/966, the following telegram has been received from President Leonard:

"Re Texas 11/966 on February 2, 1967 you sent us a letter quoting a telegram you had received from L D McHargue who indicates that tile layers' local 20 contends that they are in compliance with the decision rendered by the Joint Board on November 9, 1966 which awarded the plumbing, rodding and squaring of walls which are to receive tile on the Houston University Science Building, Houston Texas, to the plasterers. The contents of the telegram received from Secretary McHargue are erroneous. As of this date we wish to advise you that the contractor and tile layers local 20 are not abiding by the decision rendered on November 9, 1966. We respectfully request that Southwestern Construction Co. contractor, Texas State Tile & Terrazzo Co. subcontractor, and tile lay-

ers local 20 be directed to immediately comply with the decision rendered November 9, 1966."

Contractor is again directed to comply with the Joint Board job decision of November 9, 1966.

President Murphy is again requested to instruct the local union to comply with this Joint Board job decision.

Very truly yours,

WILLIAM J COUR
Chairman

WJC/mjk
cc: E Leonard—OPCMIA
D Witcraft—AGC

P-36Q

WESTERN UNION

SENDING BLANK

Call letters GDS Paid Charge to OP&CMIA March 6, 1967

William J Cour, Chairman, National Joint Board of Settlement of Jurisdictional Disputes

815 16th Street, Northwest Washington D C

With reference to File TEXAS 11/9/66, would appreciate the Joint Board clarifying its decision of November 9, 1966 regarding dispute between our members and the Bricklayers over plumbing, rodding and squaring of walls which are to receive tile on the Houston University Science Building, Houston Texas, Southwestern Construction Company Contractor, Texas State Tile and Terrazzo Company Subcontractor. Additional information regarding our request for clarification of this decision to follow.
Edward J Leonard, General President, O P & C M I A
EJL

P-36R

FCL NL NATL JOINT BOARD MAR 6, 1967

BOOK TWO COPIES

SOUTHWESTERN CONSTRUCTION CO—CONTRACTOR
2929 RUSK AVENUE
HOUSTON TEXAS

TEXAS STATE TILE AND TERRAZZO COMPANY
SUBCONTRACTOR
3115 GOLFCREST
HOUSTON TEXAS

PRESIDENT LEONARD HAS REQUESTED CLARIFICATION OF JOINT BOARD JOB DECISION OF NOVEMBER 9, 1966 IN JURISDICTIONAL DISPUTE BETWEEN PLASTERERS AND BRICKLAYERS OVER PLUMBING, RODDING AND SQUARING OF WALLS WHICH ARE TO RECEIVE TILE, HOUSTON UNIVERSITY SCIENCE BUILDING JOB, HOUSTON TEXAS, SOUTHWESTERN CONSTRUCTION CO CONTRACTOR, TEXAS STATE, TILE AND TERRAZZO COMPANY SUBCONTRACTOR. THIS REQUEST FOR CLARIFICATION WILL BE CONSIDERED BY JOINT BOARD AT ITS MEETING MARCH 14, 1967.

WILLIAM J COUR CHAIRMAN NATIONAL JOINT BOARD
EIGHT FIFTEEN SIXTEENTH NORTHWEST

WCJ/lp

cc: E J LEONARD—OPCMIA
D R WITCRAFT—AGC

P-36S

NATL JOINT BOARD MAR 6, 1967

THOMAS F MURPHY GENERAL PRESIDENT
BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL UNION
BOWEN BUILDING
WASHINGTON.D C

PRESIDENT LEONARD HAS REQUESTED CLARIFICATION OF JOINT BOARD JOB DECISION OF NOVEMBER 9, 1966 IN JURISDICTIONAL DISPUTE BETWEEN OPCMIA AND BMPIU OVER PLUMBING, RODDING AND SQUARING OF WALLS WHICH ARE TO RECEIVE TILE, HOUSTON UNIVERSITY SCIENCE BUILDING JOB, HOUSTON TEXAS, SOUTHWESTERN CONSTRUCTION COMPANY CONTRACTOR, TEXAS STATE TILE AND TERRAZZO COMPANY SUBCONTRACTOR.
THIS REQUEST FOR CLARIFICATION WILL BE CONSIDERED BY THE JOINT BOARD AT ITS MEETING OF MARCH 14, 1967.
WILLIAM J COUR CHAIRMAN NATIONAL JOINT BOARD

WJC/lp

cc: E J LEONARD—OPERATIVE PLASTERERS & CEMENT MASONS INTERNATIONAL ASSOCIATION

P-36T

OPERATIVE PLASTERERS'
AND CEMENT MASONS'
International Association of the United States and Canada

March 13, 1967

Mr. William J. Cour, Chairman
National Joint Board for Settlement of
Jurisdictional Disputes
815 16th Street, N. W.
Washington, D. C. 20006

Re: TEXAS 11-9-66

Operative Plasterers' and Cement Masons'
International Association

Bricklayers, Masons and Plasterers' International
Union of America

Southwestern Construction Company
Texas State Tile and Terrazzo Company

Dear Mr. Cour:

Supplementing our telegram to you of March 6, 1967 requesting a clarification of the above captioned award, we submit the following information for consideration by the National Joint Board:

The OP & CMIA, on October 27, 1966, requested the National Joint Board to decide the jurisdictional dispute between the OP & CMIA and the Tile Setter members of the BM & PIU "over the plumbing, rodding and squaring of walls which are to receive tile on the Houston University Science Building" job. The Joint Board, on November 9, considered this dispute and the method in which walls were being prepared to receive tile and the installation of the tile and issued the following decision:

> The Joint Board voted to make the following job decision: The work in dispute is governed by the agreement of August 22, 1917, and shall be assigned to plasterers, except that any coat to be applied wet

> the same day under tile shall be placed by tile setters. In the thin-set or adhesive method of applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar; that is the scratch coat and plumb coat. The plasterers shall plumb, rod and square all walls, rod and level all ceiling and the tile setter shall apply the final setting bed for his tile.

There is no dispute over the first part of the award dealing with installation of tile applied wet the same day under tile, although under the 1917 Agreement and Decision of Record, which appear in the Green Book, the application of this coat would also be the work of the Plasterers. However, in the interest of efficiency, the Plasterers will abide by that portion of the Board's award. Clarification, however, is needed of that portion of the award concerning the "thin-set or adhesive" method of applying tile in view of the position taken by the B.M. & P.I.U. here. On this job, the Tile Setters refused to relinquish the application of the second coat of mortar on metal lath and the first coat of mortar on concrete block or clay tile to the Plasterers in accordance with the Joint Board's decision, despite the fact that these coats were being used to plumb, rod and square the walls preparatory to receiving tile to be installed in the thin-set or adhesive method; that is, the second coat of mortar on metal lath or the first coat of mortar on concrete block or clay tile was allowed to dry and the tile installed later by the use of a commercial Portland cement based mortar or mastic.

In view of the B.M. & P.I.U.'s refusal to abide by the award, we requested by telegram that the contractor and the B.M. & P.I.U. be directed to abide by the November 9 decision. On January 27, the contractors involved and the B.M. & P.I.U. were ordered by the Joint Board to comply with the decision of November 9.

On February 2, 1967, the O.P. & C.M.I.A. was informed by the Chairman of the Joint Board that Tile Layers Local

20 of the B.M. & P.I.U had forwarded the following telegram to the Joint Board:

> "Regarding Texas 11-9-66 Tile Layers Local 20 contends we are in compliance with ruling, which stated the final float coat would be work of the Tile Layers and this is all we are doing. Thank you very much.
>
> L. D. McHargue, Secretary"

In other words, the Tile Setters are interpreting the last part of the Joint Board's award which says "the tile setter shall apply the final setting bed for his tile" to mean that they have been awarded the second coat of mortar on metal lath or the first coat of mortar on concrete block or clay tile even though it was only these coats of mortar which are in dispute and which the Joint Board awarded to the Plasterers since these coats are used to plumb, rod and square the walls. The Tile Setters in their telegram refer to the plumb coat as the "float coat" and infer that this coat is part of the setting bed. This distorted interpretation of the Joint Board's award has been utilized by the Tile Setters in many cases to excuse their refusal to comply with the awards of this Board and, therefore, it is time that this matter be clarified once and for all so there is no room for distortion.

The Tile Setters claim that the Plasterers are only entitled to the first or scratch coat of mortar on metal lath when tile is to be set in the thin-set or adhesive method, and are entitled to no work when tile is to be installed in a thin-set or adhesive method on concrete block or other firm foundation, even though in both cases a coat of mortar is to be installed to plumb, rod and square the walls prior to the installation of the tile. The Tile Setters argue that this plumb coat is their setting bed, which, under the Joint Board's award, they are entitled to do. It is quite clear, however, that this plumb coat is the work that has been consistently awarded to the Plasterers in this case and all prior Joint Board decisions.

In view of the position taken by the Tile Setters in this case, it is necessary that the Joint Board clarify its decision of November 9 to specifically define the term "final setting bed" in the thin-set or adhesive method of installing tile.

It is quite clear that the setting bed in the thin-set or adhesive method is the commercial Portland cement based mixtures such as TEC, L&M, etc., or the mastic type mixtures which are used to apply the tile over a previously prepared coat of mortar which is *dry*. The dry plumb coat of mortar cannot be called a setting bed—its purpose is not to bed tile to the wall but rather to make the wall plumb and square. After the plumb coat of mortar is applied, the Tile Setter may apply either a third coat of mortar over the dry plumb coat and bed his tile in it while still wet (the conventional method), or apply a thin coat of TEC or other commercially prepared thin setting material and set his tile in it (the thin-set method). In other words, the thin setting bed materials are substitutes for the Tile Setters' conventional mortar setting bed.

A suggested method of clarification may be to change the last sentence of Texas 11-9-66 to read:

> "In the thin-set adhesive method of applying tile to walls and ceilings, the plasterer shall apply up to two coats of mortar (depending on the requirements of the job) to scratch and/or to plumb, rod and square the walls and level the ceilings. The tile setter shall apply the thin-set material or adhesive which shall be the setting bed for his tile."

We believe the above suggested clarification is reasonable and fair and is consistent with the intent of the Joint Board. We urge the Board to adopt it.

Very truly yours,

EDWARD J. LEONARD
Edward J. Leonard
General President

EJL
lah

P-36U

March 15, 1967

Texas 11/9/66

Edward J. Leonard, General President
Operative Plasterers and Cement Masons
International Association
1125 Seventeenth Street N.W.
Washington, D. C. 20006

Thomas Murphy, General President
Bricklayers Masons and Plasterers International Union
Bowen Building
Washington, D. C. 20005

Southwestern Construction
Company
Contractor
P O Box 1204
Houston Texas 77001

Texas State Tile & Terrazzo
Co.
Subcontractor
3115 Gulfcrest Boulevard
Houston Texas

Gentlemen:

At its meeting March 14, 1967, the Joint Board considered President Leonard's request for clarification of its job decision of November 9, 1966 in the jurisdictional dispute between the Operative Plasterers and Cement Masons International Association and the Bricklayers Masons and Plasterers International Union over plumbing, rodding and squaring of walls which are to receive tile, Houston University Science Building job, Houston Texas, Southwestern Construction Company contractor, Texas State Tile & Terrazzo Co. subcontractor, and voted to clarify this job decision as follows.

The agreement of August 22, 1917 between the Operative Plasterers and Cement Masons International Association and the Bricklayers Masons and Plasterers Interna-

tional Union and the decision of record of February 21, 1924 provides that the plumbing, rodding and squaring of all walls which are to receive tile shall be performed by plasterers. Plaster materials for this purpose are normally applied directly to the initial scratch coat. Where no scratch coat is required, such as in the case of clay tile or concrete block walls, the plaster materials are applied directly to such walls.

In the so-called conventional method of setting tile, an additional coat of plaster materials is applied to furnish a setting bed for tile, and there appears to be no dispute between the parties where this method is followed. The work involved in the Joint Board job decision of November 9, 1966 involved the so-called thin-set method for the major part of the work.

The Joint Board voted to clarify its job decision by stating that the coat of plaster material which is applied directly to the initial scratch coat or directly to clay tile or cement block walls is for the primary purpose of plumbing, rodding and squaring of walls to receive tile and, in accordance with the aagreement of record and the decision of record referred to above, shall be assigned to plasterers.

The Joint Board, in recognition of the problems created by having two different trades working at the same time on separately identifiable work operations, further voted that if the tile to be adhered to the coat of plaster material applied to the initial scratch coat of directly to clay tile or cement block walls is set during the same work day in which such coat is applied the plaster materials shall be applied by tile setters in the interest of efficient job operation.

When the tile is not set during the same work day in which the plaster materials are applied to the initial scratch coat or directly to clay tile or cement block walls, the Joint Board voted that the application thereof is for the primary purpose of plumbing, rodding and squaring

the walls to receive tile and shall be assigned to plasterers in accordance with the agreement of record of August 22, 1917 and the decision of record of February 21, 1924.

This action of the Joint Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

WILLIAM J. COUR
Chairman

WJC/lp
cc: C. J. Haggerty—B&CT Dept.
D. R. Witcraft—AGC

Texas State Exhibit 1

PROCEDURAL RULES AND REGULATIONS OF THE NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES BUILDING AND CONSTRUCTION INDUSTRY AND APPEALS BOARD PROCEDURES

July 21, 1965

PROCEDURAL RULES AND REGULATIONS OF THE NATIONAL JOINT BOARD

These procedures shall apply to:

(a) Contractors who employ members of the organizations affiliated with the Building and Construction Trades Department, AFL-CIO, and who have signed a stipulation setting forth that they are willing to be bound by the terms of the agreement establishing the Joint Board, or who are members of a signatory association of contractors with authority to bind its members, or who are parties to a collective bargaining agreement providing for the settlement of jurisdictional disputes under the procedures herein

set forth. The stipulation form adopted by the Joint Board provides:

Date.....

"In signing this stipulation, the undersigned agrees to be bound by the terms and provisions of the agreement effective May 1, 1948, as amended by agreement effective October 1, 1949, creating the National Joint Board for Settlement of Jurisdictional Disputes. In particular, the undersigned agrees to be bound by the provision of the agreement which states: 'any decision or interpretation by the Joint Board (or Hearings Panel) shall immediately be accepted and complied with by all parties signatory to this agreement.' This authorization shall run for the term of the agreement, and shall continue in effect for each year thereafter unless specifically terminated at the renewal date of said agreement which is March 31.

(Signed).....'"

(b) All unions affiliated with the Building and Construction Trades Department, AFL-CIO, in the building and construction industry.

* * *

PROCEDURES USED BY THE JOINT BOARD:

* * *

7. (a) In making a job decision the Joint Board shall utilize the following criteria: Decisions and agreements of record as set forth in the Green Book, valid agreements between affected International Unions attested by the Chairman of the Joint Board, established trade practice and prevailing practice in the locality.

* * *

8. Each job decision of the Joint Board shall state that the job decision was predicated upon the particular facts and evidence before the Joint Board regarding the dispute and shall be effective on the particular job only.

9. The affected Unions and contractors shall promptly comply with each job decision of the Joint Board.

10. In the event any contending International Organization feels that a decision rendered by the National Joint Board has been in error, it shall be privileged, within ten working days of receipt of the decision, either (a) to request reconsideration of a National Joint Board job decision upon submission of additional written evidence; or (b) to request an oral hearing on such decision by the National Joint Board, provided that the job decision has been accepted and put into effect by the affected parties, and further that such job decision remains in continuous effect until reconsidered or an oral hearing is held by the Joint Board. The Chairman shall determine the matter of compliance with the job decision in question and, if it is found to be in accordance with the job decision, shall set a date for such reconsideration or oral hearing. The contending International Unions shall be notified and given opportunity to present written evidence or be heard in the event of an oral hearing. It is permissible at oral hearings for the affected parties to present witnesses. Requests for postponement of an oral hearing must be received by the Joint Board a minimum of forty-eight hours prior to the date scheduled for the hearing.

* * *

13. The Joint Board should not ignore the interests of the consumer in settling jurisdictional disputes but should give due regard to such factors as efficiency and economy of operation.

Texas State Exhibit 2

NATIONAL AGREEMENT

By and Between the
TILE CONTRACTORS' ASSOCIATION OF AMERICA, INCORPORATED

and the

BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA

AGREEMENT

THIS AGREEMENT, renewed and entered into this nineteenth day of January, 1966, by and between the Tile Contractors' Association of America, Incorporated, Party of the First Part, and the Bricklayers, Masons and Plasterers' International Union of America, Party of the Second Part, shall become operative on January 20, 1966.

ARTICLE I

WITNESSETH:

That in consideration of this Agreement renewed this day, which is to remain in full force and effect until January 20, 1969, unless sooner abrogated by mutual consent of the parties hereto, do each for ourselves and every individual member of our respective organization pledge full compliance with all its terms.

ARTICLE II

Section 1. THIS AGREEMENT pertains to the setting, slabbing or installing of all classes of TILE, whether for interior or exterior purposes, in any public or private building anywhere within the territory of the United States or the Dominion of Canada.

Section 2. Tile Layers Work is defined as:

(a) The laying, cutting or setting of all tile where used for floors, walls, ceilings, walks, promenade roofs, exterior

veneers, stair treads, stair risers, facings, hearths, fireplaces and decorative inserts, together with any marble plinths, thresholds or window stools used in connection with any tile work; also to prepare and set all concrete, cement, brickwork or other foundations or material that may be required to properly set and complete such work.

(b) The application of a coat or coats of mortar, prepared to proper tolerance to receive tile on floors, walls and ceilings regardless of whether the mortar coat is wet or dry at the time the tile is applied to it.

Texas State Exhibit 4

Plan for Settling Jurisdictional Disputes
Nationally and Locally
Approved by
The Building and Construction Trades
Department, AFL-CIO
Agreements and Decisions Rendered Affecting the
Building Industry
By the
American Federation of Labor
Building and Construction Trades Department, AFL-CIO
National Board of Jurisdictional Awards
National Referees John A. Lapp, Peter Eller,
Wm. L. Hutcheson and National Joint Board
April 1, 1965

* * * * * * * * * *

ARTICLE II

* * * * * * * * * *

Sec. 4. It shall be the duty of the Joint Board to consider and decide cases of jurisdictional disputes in the building and construction industry, which disputes are referred to it by any of the International Unions involved in the dispute, or an employer directly affected by the

dispute on the work in which he is engaged or by a participating organization representing such employer.

* * * * * * * * * * *

ARTICLE III

Sec. 1. (a) In making a job decision the Joint Board shall utilize the following criteria: Decisions and agreements of record as set forth in the Green Book, valid agreements between affected International Unions attested by the Chairman of the Joint Board, established trade practice and prevailing practice in the locality.

(b) The Joint Board may at its discretion hold oral hearings on repetitive disputes for the purpose of rendering a decision applying in the locality as defined by the Board.

(c) All agreements and decisions recognized under the provisions of the Constitution of the Building and Construction Trades Department shall be considered as constituting the record.

(d) Any job decision or ruling rendered by the Joint Board under paragraph (b) of this section may be appealed to a Hearings Panel by any of the participating National or International Unions involved or may be referred to a Hearing Panel for a national decision by action of the Joint Board. Any decision rendered by such a Hearings Panel shall immediately become part of the record referred to in paragraph (c) of this section.

(e) In jurisdictional dispute cases where International Unions, members of the Building and Construction Trades Department, AFL-CIO, and participating or stipulated employer national associations, do not have direct representation on the Board hearing a specific case, they may designate a representative to participate in the discussion of such case.

(f) The Joint Board should not ignore the interests of the consumer in settling jurisdictional disputes, but should

give due regard to such factors as efficiency and economy of operation.

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AGREEMENT

(Preparation of Walls and Ceilings to Receive Tile)

Agreement entered into this 22nd day of August, 1917, between the B. M. & P. I. U. and the O. P. & C. F. I. A. pertaining to the preparing or plastering of walls and ceilings which are to receive tile;

First. It is agreed that the plasterers of the O. P. & C. F. I. A. and the B., M. & P. I. U. shall prepare or plaster all walls which are to receive tile. They shall plumb, rod and square all walls and scratch the same so as to guarantee adhesion of the final coat which shall be put on by the Tilelayer to act as a bed for his tile.

Second. It is further agreed that the Plasterers of either the O. P. & C. F. I. A. or the B., M. & P. I. U. shall prepare or plaster all ceilings which are to receive tile. All ceilings must be leveled and rodded and properly scratched so as to guarantee adhesiveness of the final coat which shall be applied by the Tile Setter and act as a bed for his tile.

Third. It is further agreed that the Plasterers shall use only sand and cement in the preparation of work above stipulated unless otherwise specified by the architect.

Fourth. Any member of either organization that violates the above rules shall, upon conviction, be fined the sum of $25.00.

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Decisions Rendered by the National Board for Jurisdictional Awards in the Building Industry.

* * * * * * * * * * *

Plastering Work for Preparation of Walls and Ceilings for Tiling

(Subject of dispute between the Bricklayers, Masons and Plasterers' International Union and the Operative Plasterers and Cement Finishers' International Association.)

Decision Rendered February 21, 1924

* * * * * * * * * * *

After reviewing the controversy in its various phases, the determination is reached that the agreement previously existing between the two organizations affords the most practical plan of adjustment, and the following award is therefore made as the decision of the Board:

Plasterers shall prepare or plaster all walls and ceilings which are to receive tile, except the final setting bed, which shall be applied by the Tile Layers; the bath rooms, vestibule and small halls in single private residences shall be plastered by the Tile Setters.

Texas State Exhibit 7

MARTINI
TILE AND TERRAZZO COMPANY
INCORPORATED
1902 Taft Street Phone JA 6-3769
Houston, Texas 77006

SPECIFICATIONS

Rainbo Baking Co.
4104 Leeland
Houston, Texas

System for installing wall tile over masonry, one-coat method.

Metal lath applied over masonry.

Tile setting bed (sand/cement) applied over metal lath.

Bond coat applied over setting bed or to back of tiles, and tile bonded to this coat and grouted.

Texas State Exhibit 12

MARTINI TILE AND TERRAZZO CO., INC.

Stock Requisition

Job No. 6849-T
Date 3-9-67

Name Rainbo Bakery Arch. None

Job Address 4104 Leeland Mr. Stephenson—Engr.

* * * * * * * * * * *

Apply Metal Lath Over Masonry Wall & Setting Bed Over Lath. Hold Sand/Cement Setting Bed As Tight Or Close As Possible. Install Tile Over Neat Coat Of L&M.

Texas State Exhibit 13

AGREEMENT

BY AND BETWEEN
TILE, TERRAZZO AND MARBLE CONTRACTORS
OF HOUSTON, TEXAS

and

THE BRICKLAYERS, MASONS. AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL UNION #20 OF HOUSTON, TEXAS, REPRESENTING TILE SETTERS, TERRAZZO WORKERS AND MARBLE SETTERS

* * * * * * * * * * *

ARTICLE II.

The work of Tile, Marble and Terrazzo Mechanics shall be all work recognized as per the National Agreements of the National Tile Contractors Association of America, Inc., National Terrazzo & Mosaic Association, National Association of Marble Dealers and Bricklayers, Mason and Plasterers' International Union of America.

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ARTICLE VIII.

The Wage Schedule as follows:

Hourly Rates

	Jan. 1, 1967	Jan. 1, 1968	Jan. 1, 1969
Journeymen	$4.50	$4.75	$5.00
Foreman	4.70	4.95	5.20
Apprentices			
First Six Months	3.00	3.20	3.40
Second Six Months	3.10	3.30	3.50
Third Six Months	3.20	3.40	3.60
Fourth Six Months	3.30	3.50	3.70
Fifth Six Months	3.40	3.60	3.80
Sixth Six Months	3.60	3.80	4.00

Above rates will be in effect until June 30, 1969, or until changed by mutual agreement.

Texas State Exhibit 14

Plasterers Local Union No. 79

AGREEMENT ENTERED INTO
BY and BETWEEN

The Contractors' Lathing and Plastering Association of Houston, Texas, Inc., a trade association composed of lathing and plastering contractors, hereinafter the "Contractors", and the Plasterers Local Union No. 79 O.P.C. M.I.A. of Houston, Texas hereinafter called the "Union".

ARTICLE I

Recognition

The Union is recognized as bargaining agent for all Plasterers and Plasterer Apprentices whom it lawfully represents, who may be employed by Contractors in the area covered by the present Jurisdiction of the Union. The Jurisdiction being the following counties in the State

of Texas: Austin, Angelina, Brazoria, Brazos, Burleson, Colorado, Fort Bend, Harris, Lavaca, Calhoun, Dewitt, Victoria, Goliad, Jackson, Matagorda, Grimes, Houston, Leon, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, Waller, Washington, and Wharton.

ARTICLE II

Section 1. Effective July 1, 1965, the hourly rate shall be:

Plasterer Foreman	$4.60
Plasterer Journeyman	$4.35

Effective July 1, 1966 the hourly rate shall be:

Plasterer Foreman	$4.775
Plasterer Journeyman	$4.525

Effective July 1, 1967 the hourly rate shall be:

Plasterer Foreman	$4.925
Plasterer Journeyman	$4.675

Texas State Exhibit 20

CONSTITUTION

Operative Plasterers' and Cement Masons' International Association
of the United States and Canada

* * * * * * * * * *

Plasterers' Jurisdiction

Sec. 118. (a) All interior or exterior plastering of cement, stucco, stone imitation or any patent material when cast, the setting of same, also corner beads when stuck must be done by practical Plasterers of the O.P. & C.M.I.A. This includes the plastering and finishing with hot composition material in vats, compartments or wherever applied; also the taping and pointing of all joints, nailholes and bruises on wallboard, regardless of the type

of materials or tools used; also the setting in place of plasterboards, ground blocks, patent dots, cork plates, brownstone, and acoustical tile including temporary nailing, cutting and fitting in connection with the sticking of same. All acoustic blocks when stuck with any plastic materials, regardless of thickness, shall be the work of the Plasterer only. Also the sticking, nailing and screwing of all composition caps and ornaments. The preparing, scratching and browning of all ceilings and walls when finished with terrazzo, or tile shall be done by Plasterers of this Association, allowing sufficient thickness to allow the applying of the terrazzo or tile and the application of any plastic material to the same must be done by members of the O.P. & C.M.I.A. who are practical Plasterers.

(b) Practical Plasterers are men who are proficient in the use of the hawk and trowel and other implements or tools of the trade.

Local Unions shall have autonomy governing the mixing of all materials but shall not deviate from manufacturers standards or the specifications of the American Standards Association.

General Counsel's Exhibit 6

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-THREE

Case No. 23-CD-133

PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF HOUSTON, TEXAS

and

SOUTHWESTERN CONSTRUCTION COMPANY

Case No. 23-CD-137

PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF HOUSTON, TEXAS

and

MARTINI TILE AND TERRAZZO COMPANY

STIPULATION

1. That the work in dispute in both cases is that described in the Decision and Determination of the Disputes reported at 167 NLRB No. 23, and the record of the 10(k) proceeding itself.

2. (a) That Texas State Tile and Terrazzo, Inc. (Texas State) assigned the work on the M. D. Anderson Library job (Library job) in dispute to its employees who are members of or represented by Tile, Terrazzo and Marble Setters Local Union No. 20 (Tile Setters).

2. (b) That Martini Tile and Terrazzo Company (Martini) assigned the work in dispute on the Rainbo Baking Company job (Rainbo) to its employees who are members of or represented by the Tile Setters.

3. That Respondent claimed the work in No. 1 and No. 2 above at all times material herein.

4. That on January 24, 1967, Respondent established a picket at the Library job, the legend of which reads:

> Plasterers Local 79 protest the refusal of Texas State Tile and Terrazzo to comply with National Joint Board. Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or concerted refusal to work.

5. That the picket described in No. 4 above remained at the Library job until February 10, 1967, at which time the picketing ceased in compliance with an injunction issued on such date by the United States District Court for the Southern District of Texas, Houston Division.

6. That on March 17, 1967, Respondent placed a picket at the Rainbo job, the legend of which read:

> "Plasterers Local No. 79 protests substandard conditions Martini Tile Co., Inc., Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or a concerted refusal to work."

7. That during the period of the picketing the Rainbo job described in paragraph 6 above, certain crafts did not work.

8. Respondent's object in posting the picket line described in No. 6 above, was to force a change in the assignment of the work in dispute on the Rainbo job which was being installed by the employees of Martini who were members of or represented by the Tile Setters to employees who are members of or represented by the Plasterers.

9. On August 22, 1967, the Board issued, at 167 NLRB No. 23, its decision and Determination of Disputes in the 10(k) proceeding involving Cases Nos. 23-CD-133 and 23-CD-137 whereby it awarded the work in dispute, to

employees of Texas Tile and Martini who are represented by the Tile Setters.

10. At no time following the issuance of the Board's Decision and Determination of Disputes on August 22, 1967, has Respondent given written notification to the Regional Director for Region 23 whether it would refrain from forcing or requiring Texas Tile and/or Martini by means proscribed in Section 8(b)(4)(D) to assign the work in dispute to Plasterers rather than tile setters.

RICHARD J. LINTON
Richard J. Linton
Counsel for the General Counsel
DONALD J. CAPUANO
Donald J. Capuano
Attorney for Respondent

LESLIE THACKER
Attorney for the Tile Setters, Tile Setters Helpers, Texas State and Martini

KENNETH R. CARR
Kenneth R. Carr
Attorney for Southwestern Construction Company

Excerpts From Transcript Before Hearing Examiner

[1] BEFORE THE NATIONAL LABOR RELATIONS BOARD
Twenty-Third Region

Case No. 23-CD-133

In the Matter of:

PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF HOUSTON, TEXAS

and

SOUTHWESTERN CONSTRUCTION COMPANY

Case No. 23-CD-137

PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF HOUSTON, TEXAS

and

MARTINI TILE AND TERRAZZO COMPANY

7620 Federal Office Building,
515 Rusk Avenue,
Houston, Texas,
Monday, October 30, 1967.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock, a. m.

Before:

GORDON J. MYATT, Esq., Trial Examiner.

Appearances:

RICHARD J. LINTON, Esq.,
6617 Federal Office Building,
515 Rusk Avenue, Houston, Texas
77002, appearing as counsel for the
General Counsel.

[2] FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI,

By: KENNETH R. CARR, Esq.,
Bank of the Southwest Building, Houston, Texas, appearing on behalf of Southwestern Construction Company, Charging Party.

LESLIE THACKER, Esq.,
2711 Woodhead Street, Houston, Texas, appearing on behalf of Martini Tile and Terrazzo Company, Charging Party.

O'DONOGHUE & O'DONOGHUE,
By: DONALD J. CAPUANO, Esq.,
1912 Sunderland Place, N.W., Washington, D.C., appearing on behalf of Plasterers Local Union No. 79, Operative Plasterers and Cement Masons International Association of Houston, Texas, Respondent.

* * * * * * * * * *

[14] Trial Examiner: Any thing further, Mr. General Counsel?

Mr. Linton Your Honor, at this time I would move that the exhibits which have been introduced constitute the entire record in this case, and that a hearing before the Trial Examiner, further hearing, be waived, and that the entire record be submitted directly to the Board for the issuance of findings of fact, conclusions of law and a decision, and that such matters, the findings of fact, conclusions of law by the Trial Examiner, and the issuance of a Trial Examiner's Decision, be waived.

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[15] Trial Examiner: Mr. Capuano?

Mr. Capuano: I am in agreement that the case should be transferred to the Board. May I make a comment about what Miss Thacker said?

Trial Examiner: Yes.

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[17] Trial Examiner: As I view this matter, I am not prepared to honor your request to stay this proceeding. This proceeding is confined to whether or not there has been an unfair labor practice committed and also, as I see it, whether or not there has been compliance with the Board's award. Your motion goes to the scope of the Board's award in an effort to enlarge it, as I understand it. And therefore, I feel at this point that this proceeding should not be stayed.

I also think there is some merit in what Mr. Capuano has indicated, that this matter, itself, should be before the Board inasmuch as your motion to open the 10(k) is before the Board for decision. So I do not feel that you would be prejudiced in any way. And for these reasons I am going to deny your request to stay this proceeding.

And in keeping with that I will grant the request to transfer the entire record of this case to the Board, all parties waiving a Trial Examiner's findings of fact, conclusions of law and a decision in this case, and requesting that the Board make the findings of fact and conclusions of [18] law and issue its decision herein.

That being the case, unless there is anything more anybody wants to bring out, we can conclude this hearing.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,073

PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

TEXAS STATE TILE & TERRAZZO CO., INC., ET AL., AND LOCAL UNION 20 BRICKLAYERS, ETC., LOCAL UNION 108 INT'L ASSOC. OF MARBLE, ETC., POLISHERS, ET AL., INTERVENORS

On Petition to Review and on Cross-Petition to Enforce an Order of the National Labor Relations Board

Decided June 30, 1970

Mr. Donald J. Capuano, with whom *Mr. Martin F. O'Donoghue* was on the brief, for petitioner.

Mr. Peter Ames Eveleth, Attorney, National Labor Relations Board, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Messrs. Arnold Ordman*, General Counsel, *Dominick L. Manoli*, Associate General Counsel, *Marcel Mallet-Prevost*, Assistant General Counsel, *Elliott Moore* and *Hans J. Lehmann*, Attorneys, National Labor Relations Board, were on the brief, for respondent.

Mr. Wayne S. Bishop for intervenors, Tile Contractors Association of America, Inc., Texas State Tile & Terrazzo Co., et al.

Mr. Jerry D. Anker for union intervenors.

Messrs. Louis Sherman and *Elihu I. Leifer* filed a brief on behalf of the Building and Construction Trades Department, AFL-CIO, as *amicus curiae*.

Miss Leslie Thacker filed a brief on behalf of Ceramic Tile institute of America, et al., as *amicus curiae.*

Before: McGOWAN, LEVENTHAL and MACKINNON, *Circuit Judges.*

LEVENTHAL, *Circuit Judge*: This appeal concerns the provisions of the National Labor Relations Act ("Act"), 29 U.S.C. § 141 et seq., applicable to jurisdictional disputes. The particular jurisdictional dispute involves whether the job of applying a coat of mortar on a wall to be tiled should be given to the Plasterers or the Tile Setters (that is, to petitioner, Plasterers Local Union No. 79, Operative Plasterers and Cement Masons' International Assn., AFL-CIO, or to intervenor, Tile Terrazzo and Marble Setters Local Union No. 20 of the Bricklayers, Masons and Plasterers International Union).

Following a hearing pursuant to § 10(k) of the National Labor Relations Act,[1] the National Labor Relations Board, hereafter "Board," awarded the work in dispute to the Tile Setters.[2] The issue is whether it was error for the Board to have conducted a 10(k) hearing after being timely advised that both unions had agreed to be bound by the decisions of the National Joint Board for the Settlement of Jurisdictional Disputes, an arbitration panel established by the Building Trades Department, AFL-CIO, hereafter the "Joint Board."

The Plasterers claim the Joint Board awarded the work to them,[3] and that it was error for the Board to make a

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[1] 29 U.S.C. § 160(k).

[2] The Board's Decision and Determination of Disputes under § 10(k) was issued on August 22, 1967, and is reported at 167 NLRB No. 23.

[3] The Plasterers also argue that assuming statutory authority to make an award, the Board's decision and order were arbitrary as reflecting an excessive weight given by the Board to the factor of the employer's assignment, and a failure to give due consideration to other factors which supported the Plasterers claim. Our disposition of this appeal makes it unnecessary to reach this question.

10(k) determination. The Board's position is that while it may not hold a 10(k) hearing when the parties to a jurisdictional dispute have agreed on a method for voluntry adjustment of the dispute, this bar does not arise unless all the parties to the dispute are bound by the voluntry adjustment procedure. Because the Board considers the employer to be a party to the dispute, and because the employers making work assignments in the instant disputes were not bound by the determinations of the Joint Board, the Board contends that it properly held a 10(k) hearing.

These questions are before this court on the petition of Plasterers to review, and the cross-application of the Board to enforce, a June 27, 1968 order in which the Board found the Plasterers had committed an unfair labor practice in violation of § 8(b)(4)(D) of the Act [4] by picketing Texas State Tile and Terrazzo Company (Texas State), and Martini Tile and Terrazzo Company (Martini), with the object of forcing these employers to assign the disputed work to employees represented by Plasterers.[5]

We agree with the plasterers that the Board may not properly proceed to determine a jurisdictional dispute pursuant to § 10(k) when the disputing unions have agreed to settle their dispute through binding arbitration. In as much as the Board's finding of an 8(b)(4)(D) violation incorporates and relies on an invalid 10(k) proceeding and award, the Board's order cannot be enforced.

I *The Jurisdictional Disputes*

The focus of these jurisdictional disputes can be traced to the development in the mid-1950's of the thin-set or adhesive method of applying tile. Previously it was necessary to set tile in a bed of wet plaster so that moisture would not be absorbed from the bonding agent before it

[4] 29 U.S.C. § 158(b)(4)(D).

[5] The Board's Decision and Order in the unfair labor practice phase of the case is reported at 172 NLRB No. 77.

hardened and formed a firm bond. The application of this setting bed or float coat was the work of tile setters. The thin-set method, on the other hand, employed new bonding agents which made it possible to apply tile directly to a smooth surface of dry plaster on a thin coat of dry-set mortar. The Tile Setters contended that they should prepare this smooth plaster surface just as they had prepared the wet setting bed. The Plasterers took the position that the tile setter was only entitled to apply his setting bed and that in the thin-set method it was the dry-set mortar and not the smooth and dry plaster surface which constituted the setting bed.

The order concerns picketing which was directed against two different employers, at the sites of two unrelated jobs. The first was the M. D. Anderson Library Job at the University of Houston. Southwestern Construction Co., the general contractor for an addition to the library, had subcontracted to Texas State, a tile contractor employing members of the Tile Setters Union, the work of preparing walls and applying tile to four stairwells and two restrooms on each floor of the eight story building. The tile setters did their initial work in the lavatories where they applied the smooth coat of plaster. The Plasterers claimed this work as theirs, and when this claim was rejected by Tile Setters they submitted the dispute to the Joint Board.

On November 9, 1966, the Joint Board awarded the work in dispute to the Plasterers except that "any coat to be applied wet the same day under tile" was to be placed by Tile Setters. The award stated: "In the thin-set or adhesive method of applying tile to walls and ceilings, the plasterer shall apply the first and second coats of mortar that is the scratch coat and plumb coat. The plasterers shall plumb, rod and square all walls, rod and level all ceilings and the tile setter shall apply the final setting bed for his tile."

Plasterers thereupon claimed the remaining work of applying a smooth plaster coat on the basis of the award. The Tile Setters refused to relinquish the work, contending

that the smooth plaster coat was the tile setter's "setting bed" and that therefore the Joint Board Award actually supported their claim. On January 24, 1967, Plasterers established a picketline on the jobsite and a work stoppage ensued. Southwestern Construction Company filed an unfair labor practice charge with the Board against Plasterers. On February 10, 1967, the United States District Court for the Southern District of Texas granted the application of the Board's regional director for an injunction against the picketing and the pickets were removed.

On March 6, 1967, Plasterers requested that the Joint Board clarify its award in view of the contention of the Tile Setters that the award favored their claim. On March 15, 1967, the Joint Board issued a clarification which is set out in part in the footnote.[6] The Joint Board made clear that the job of applying a smooth coat of plaster material to an initial scratch coat or to cement or clay tile walls was the work of the Plasterers unless the tile is set the same work day that such coat of plaster is applied.

The second job at which picketing occurred was at the Rainbo Bakery. Here there was no general contractor. Martini, who did not employ plasterers, had a direct contract with the owner calling for the tiling of two walls in one area of the bakery. Tile setters undertook to perform

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[6] The Joint Board voted to clarify its job decision by stating that the coat of plaster material which is applied directly to the initial scratch coat or directly to clay tile or cement block walls is for the primary purpose of plumbing, rodding and squaring of walls to receive tile and, in accordance with the agreement of record and the decision of record referred to above, shall be assigned to plasterers.

The Joint Board, in recognition of the problems created by having two different trades working at the same time on separately identifiable work operations, further voted that if the tile to be adhered to the coat of plaster material applied to the initial scratch coat or directly to clay tile or cement block walls is set during the same work day in which such coat is applied the plaster materials shall be applied by tile setters in the interest of efficient job operation.

the application of a smooth coat of plaster to metal lath which had been tacked to masonry walls, and the application of dry-set mortar and tile to this plaster surface. The dispute was never submitted to the Joint Board. On March 17, 1967, two days after the clarification by the Joint Board described above, Plasterers picketed the jobsite for the purpose of having transferred to them that part of the work consisting of application of the smooth coat.

II *The NLRB Proceedings*

On April 6, 7 and 10 through 14, 1967, the Board held a consolidated § 10(k) hearing to determine these jurisdictional disputes. It issued its decision and determination on August 22, 1967. The Board rejected the Plasterers' contention that the notice of hearing should be quashed because the disputing unions had agreed on a method for voluntary settlement. It stated: "The Board has consistently held that the employer who assigned the disputed work must be a party to an agreement that purports to settle an existing jurisdictional dispute." On the merits of the dispute, the Board examined what it considered to be the relevant factors and concluded that Tile Setters were entitled to the work in dispute inasmuch as there was no significant difference between the two employee groups in terms of skill, and the various factors involved were all consistent with the employers' assignment of the disputed work.

When Plasterers refused to comply with the Board's determination of the work disputes, the General Counsel of the Board issued a complaint against petitioner alleging a violation of § 8(b)(4)(D) of the Act. At the unfair labor practice hearing held on October 30, 1967, the parties agreed to submit on the record in the § 10(k) proceeding. In its decision and order of June 27, 1968, the Board again rejected Plasterers' claim that the 10(k) proceeding was improperly held and found that the union had violated § 8(b)(4)(D). The Board's order provides that

the union shall cease and desist from the use of prohibited means to force or require Texas State or Martini to assign to Plasterers the disputed work at the Anderson Library and Rainbo jobs. The Board also ordered that Plasterers take the affirmative action of posting a notice indicating their intention to abide by the Board's cease and desist order. The Board's petition for enforcement is predicated on Plasterers' refusal to take this affirmative action.

III *Mootness*

A motion to dismiss this case as moot has been filed by intervenor Tile Setters, and the other union intervenors associated with them.[7] They argue that mootness follows from the fact that the Anderson Library and Rainbo Bakery jobs have been completed and that the Board's cease and desist order now proscribes conduct in which it would be impossible for the Plasterers to engage. Both Plasterers and the Board have filed memoranda arguing that the case is not moot.

Cease and desist orders of the Board aimed at remedying an unfair labor practice are frequently framed to account for changes in circumstances following the illegal practice. However, the issue of whether an unfair labor practice occurred is not mooted because the particular job involved has been completed. *Local 74, United Brotherhood of Carpenters & Joiners* v. *NLRB*, 341 U.S. 707,

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[7] The other Union Intervenors are: Bricklayers, Masons and Plasters International Union of America, hereafter "Bricklayers", International Association of Marble, Slate and Stone Polishers, Rubbers & Sawyers, Tile & Marble Setters' Helpers & Marble, Mosaic and Terrazzo Workers' Helpers, hereafter "Helpers," and Local 108 of the Helpers. Bricklayers is the parent organization of Tile Setters Local 20, whose members were performing the work sought by the Plasterers. The Helpers Union was also interested in the dispute because its members work directly with the Tile Setters, and would be replaced by members of another organization (Laborers' International Union of America) if the disputed work were assigned to the Plasterers.

715 (1951); *NLRB* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 271 (1938); *NLRB* v. *Plumbers Union of Nassau County*, 299 F.2d 497 (2d Cir. 1962).

There is precedent permitting the Board to quash a 10(k) proceeding where there could only be a stale hearing, held three years after the incident, and to dismiss the 8(b)(4)(D) complaint on the ground that "no affirmative order issued by the Board could have any effect on the parties to the original controversy since the work had long since been completed," *Tip Top Roofers, Inc.* v. *NLRB*, 324 F.2d 773 (5th Cir. 1963). But here the Board has issued an affirmative order, requiring *inter alia* the posting of notices, and Plasterers has refused to comply. We see no basis on this record for concluding that the Board acted impermissibly in viewing the controversy as being sufficiently broad and enduring to make appropriate affirmative relief. If the posting order was lawful the Board was entitled to a judicial decree of enforcement. The case is not moot.

IV *Proper Construction of Section 10(k) of the National Labor Relations Act*

The Board's reliance on the 10(k) record and determination in reaching its conclusion that Plasterers had committed an unfair labor practice preserves the 10(k) issue as a part of the review of the unfair labor practice determination.[8] The case turns on the proper construction of § 10(k) of the National Labor Relations Act, one of the provisions added by the Taft-Hartley Amendments of 1947 as a result of Congressional concern over work stoppages arising out of jurisdictional disputes between unions.

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[8] "Since there is no independent review of § 10(k) work assignments, the only stage at which the [union] can contest the work award is on review of the § 8(b)(4)(i)(ii)(D) unfair labor practice order. If the § 10(k) order fails, the unfair labor practice order falls with it." NLRB v. Local 991, ILA, 332 F.2d 66 (5th Cir. 1964).

Another provision added at the same time was § 8(b) (4) (D), set forth in the footnote,[9] which broadly prohibits a union from picketing and other actions to induce employees not to perform services for their employer with the object of forcing the employer to assign work to a particular union or craft.

Section 10(k), also set forth in footnote 9, empowers the Board to determine the jurisdictional dispute out of which the unfair labor practice charge has arisen, unless,

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[9] (b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

* * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

* * * *

However, § 8(b) (4) (D) must be read in the light of § 10(k) which provides:

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

in the words of an abstention provision, "the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute."

The Board held this abstention language of § 10(k) inapplicable, even though the unions had agreed to be bound by the decisions of the Joint Board for the Settlement of Jurisdictional Disputes—a joint board with representatives of employers and employees,[10]—on the ground that the employer was also a "party" and had not agreed to this method for voluntary adjustment.

In our view the Board erred in claiming authority under § 10(k) of the Act to determine the merits of a jurisdictional dispute between two unions when the unions had agreed on a method for binding arbitration of their disputes.

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[10] The amicus brief filed by the Building and Construction Trades Department, AFL-CIO, urging the adoption of the construction of § 10(k) advanced by Plasterers, describes the operation of the Joint Board. Article X of the Department's constitution provides that all jurisdictional disputes shall be settled and adjusted according to a plan established by the Department and that such plan "shall be recognized as final and binding upon the Department and upon all affiliated National or International Unions and their affiliated Local Unions." The disputing unions in the instant case, the Bricklayers and the Plasterers International Unions and their affiliated locals, the petitioner and intervenor, are affiliated with the Department.

The present "Plan for National Joint Board for Settlement of Jurisdictional Disputes" became effective on April 1, 1965. The Plan operates through the Joint Board, the Appeals Board and Hearings Panels established to render nationally effective decisions on an ad hoc basis. These Boards and Panels have both labor and contractor members, and the criteria for decision include interunion agreements dividing work (the Green Book), established trade practice, in the locality and such factors as efficiency and economy of operation. The machinery of the Plan is operative regardless of whether or not the particular employer affected by such a dispute decides to be bound to the Plan. The Plan provides that any decision of the Joint Board, or of the Appeals Board if an appeal is taken, "shall be immediately accepted and complied with by all parties to this Agreement."

Meaning of Abstention Provision of § 10(k)

The crucial abstention provision does not require voluntary adjustment, or agreement on a method for voluntary adjustment, on the part of all parties to the 8(b)(4)(D) proceeding, or even all parties to the 10(k) proceeding. Abstention is commanded when "the parties to such dispute" have adjusted the dispute, or agreed on a method for the adjustment of the dispute. The text of § 10(k) shows that the term "such dispute" refers to the underlying jurisdictional "dispute out of which such unfair labor practice shall have arisen." It is not the employer but the rival unions (or other employee groups) who are the parties to the jurisdictional dispute contesting which employees are entitled to seek the work in question.

Congress could have written § 10(k) so that the employer would be a necessary party to a procedure for voluntary settlement by requiring agreement on such a procedure by both the parties to the unfair labor practice charge and the parties to the underlying dispute out of which that charge arises. That Congress did not choose this approach but instead required only agreement by the unions involved in the underlying jurisdictional dispute is easily understood in the light of the refusal of Congress to bind the employer to the Board's determination of a jurisdictional dispute under § 10(k). Rather than enacting a comprehensive solution to the work assignment problem, which would have required provision for binding the employer to a determination concerning who was entitled to the work, Congress went only so far as to assure that at least the employer would not be plagued by the failure of the disputing unions to resolve their dispute. The fact that the employer is not bound by a 10(k) determination of the Board is persuasive evidence that Congress did not intend a voluntary procedure for adjustment to be held inadequate because the employer is not bound.

Although the precise question before us is, in any meaningful sense, one of first impression in the federal courts,[11] we find authority for our view not only in the text of § 10(k) but also in judicial precedents construing the provisions of the Act dealing with jurisdictional disputes and in the legislative history and congressional purpose underlying these provisions.

Protection Pending Determination under Voluntary Procedure

We interject preliminarily the observation that the provision for Board abstention pending resort to a voluntary adjustment procedure does not remove the machinery provided by the Act for interim protection against work stoppages.

Congress gave to the Board authority to insure that the jurisdictional dispute will not be the cause for further work stoppage while either voluntary procedures, or Board-conducted procedures for determination under § 10 (k), are running their course. Section 10 (*l*), quoted in the footnote,[12] authorizes the Board to seek a District

[11] We do not read the cases cited in footnote 2 of the dissenting opinion as authoritative support for the Board's position. While we would not pass over a reasoned view contrary to the one here taken, these cases do not attempt to grapple with the issue before us apparently for the reason that they are not cases where the Board's interpretation was challenged or where disposition turned on the resolution of this issue. The Board's brief candidly admits that these cases have no more than "adverted to" the issue before us and contends merely that they "reflect" its view.

[12] (*l*) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 158(b) of this title, or section 158(e) of this title or section 158(b) (7) of this title, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any

Court injunction whenever the cognizant Board employee has reasonable cause to believe in the truth of a charge of an unfair labor practice violative of § 8(b) (4) (D). That injunction remains in effect "pending the final adjudication of the Board with respect to such matter." Where the Board is conducting a 10(k) proceeding it must make a final determination under § 10(k) before it may pro-

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United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 158(b) (7) of this title if a charge against the employer under section 158(a) (2) of this title has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 158(b) (4) (D) of this title.

The vigilance of the General Counsel in applying for injunctions in 8(b) (4) (D) cases was noted in K. Strand, Jurisdictional Disputes in Construction: The Causes, the Joint Board and The NLRB 119, n. 1 (1961).

ceed to final adjudication of an 8(b)(4)(D) charge. In a case governed by the abstention provision of § 10(k) the proceeding on the 8(b)(4)(D) charge stays in being and is not dismissed unless and until the parties have not only agreed on methods for voluntary adjustment but have actually reached a voluntary adjustment of their dispute. Thus the Act provides a "speedy remedy . . . to preserve the status quo" [13] and avoids any hiatus in protection against forbidden means of pressing jurisdictional claims.

CBS Opinion

Focusing on § 10(k) we find guidance and indeed instruction on its meaning, its inter-relationship with § 8(b)(4)(D), and the pertinent legislative history, in *NLRB* v. *Radio and Television Broadcast Engineers Union* [*CBS*], 364 U.S. 573 (1961).

First, as to the meaning of the terms of § 10(k), the Supreme Court said (364 U.S. at 579): "[T]he clause 'the dispute out of which such unfair labor practice shall have arisen' can have no other meaning except a jurisdictional dispute under § 8(b)(4)(D) which is a dispute between two or more groups of employees over which is entitled to do certain work for an employer." Since a jurisdictional dispute for purposes of § 10(k) is a "dispute between two or more groups of employees," it follows that these employee groups are "the parties to such dispute" for purposes of determining whether there exists a voluntary adjustment procedure within the abstention provision of 10(k).

Second, as to the purpose of § 10(k), the Court stressed that "§ 10(k) offers strong inducements to quarrelling unions to settle their differences . . . ." 364 U.S. at 577.[14]

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[13] Local 450, International Union of Operating Engineers, AFL-CIO v. Elliott, Regional Director, 256 F.2d 630, 634 (5th Cir. 1958).

[14] This is reenforced by the Court's reference, to the history of these provisions, which came in the wake of a "continuing and

Where the quarrelling unions have agreed on a procedure for settling their differences, the purpose of § 10(k) to induce settlement is manifestly served by respecting their use of the agreed procedure.

As to the purpose of § 10(k) and § 8(b)(4)(D) taken together, the Court noted that the legislative history contained a recognition of "the necessity of enacting legislation to protect employers from being 'the helpless victims of quarrels that do not concern them at all'," *id.* at 580-81, i.e. to protect the neutral employer caught in the crossfire between the disputing unions and unable to satisfy either, in other words "caught between the devil and the deep blue." 364 U.S. at 575. The purpose of protecting the neutral employer is fully served by any binding settlement between the disputing employee groups. The neutral employer is one who cares not how the dispute is decided but wants merely that it be decided.

Further Examination of Legislative History

We have undertaken a fresh examination of the relevant legislative history. That history forcefully supports the conclusion that Congress intended in § 10(k) to encourage disputing unions to establish inter-union machinery for settling jurisdiction disputes and to afford them an opportunity to exhaust this machinery.

The original House bill contained nothing comparable to § 10(k). Senator Morse, who proposed the forerunner provision which emerged, with relatively minor modification, as § 10(k), prepared a "definitional" memorandum,

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widely expressed dissatisfaction with jurisdictional strikes." *See* 364 U.S. at 580, where the Court continued:

> As one of the forerunners to these very provisions of the Act, President Truman told the Congress in 1947 that disputes "involving the question of which labor union is entitled to perform a particular task" should be settled, and that if the "rival unions are unable to settle such disputes themselves, provision must be made for peaceful and binding determination of the issues."

which stated that while there are various kinds of "jurisdictional disputes" they have as their common ingredient a controversy between two or more labor unions." I Legis. Hist. 951.[15]

Senator Morse proposed a subsection (k) which, as appears from its text in the footnote,[16] is virtually the same as what is now § 10(k). It provided for Board determination of "the dispute out of which such unfair labor practice shall have arisen" unless "the parties to such dispute . . . have adjusted or agreed upon methods for the voluntary adjustment of such dispute." (Senator Morse also proposed enlargement of definition of unfair labor practices and authority in the Board to seek Federal injunctions pending determination of the disputes.) In supporting his proposal he referred to his own experience during World War II as a member of the War Labor Board whose undertaking of jurisdiction to determine jurisdictional dispute work stoppages resulted in a policy whereby "we would give the union leaders involved in a jurisdictional dispute 24 hours to proceed to settle the

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[15] "Legis. Hist." refers to the compiled Legislative History of the Labor Management Relations Act, 1947, published by the NLRB (1948).

[16] *See* II Legis. Hist. 987: "(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (2) (A) of section 8(b), the Board is empowered to hear and determine the dispute out of which such unfair labor practice shall have arisen or to appoint an arbitrator to hear and determine such dispute, unless, within 10 days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted or agreed upon methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the Board or the arbitrator appointed by the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

The § 8(b) (2) (A) proposed by Senator Morse was similar to what has become § 8(b) (4) (D), though it defined an unfair labor practice in terms of an inducement to refuse services "because particular work tasks of such employer or any other employer are performed by employees who are or are not members of a particular labor organization." II Legis. Hist. 986.

dispute without a work stoppage, and upon their failure to do so we would appoint an arbitrator whose decision would be final and binding." And he predicted that the same incentive to union settlement would follow from the post-war adoption of his proposal to amend the National Labor Relations Act. He stated:

> [P]robably one of the greatest benefits that will come from the adoption of such amendments to the Wagner Act as I am proposing this afternoon will be action on the part of the unions themselves to see to it that it does not become necessary, unless in exceptional cases, to resort to the machinery which I have proposed in these amendments . . . . because the unions themselves will proceed to establish within their own organizations machinery capable of settling such disputes short of economic action.[17]

While in some respects the Congress departed from Senator Morse's proposals,[18] Congress retained the thought obtained from his subsection (k), of a machinery for Board determination, an abstention provision where the parties agree on a procedure for settlement, and of an incentive to determination by the parties to the dispute. And there can be no doubt that the parties to the jurisdictional dispute were conceived of as the rival unions, or employee groups. This appears not only from the presentation of Senator Morse, but from the use of the same core concept of the underlying dispute as the jurisdictional dispute between the unions, in the House Conference Report, a document of highest standing in ascertaining legislative intent.

In its recommendation for adoption of § 10(k), the House Conference Report stated:

> The Senate amendment also contained a new section 10(k), which had no counterpart in the House bill.

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[17] II Legis. Hist. 983.

[18] His subsection (k) was modified so as to make Board determination compulsory rather than discretionary and to remove the provision authorizing reference by the Board to an arbitrator.

> This section would empower and direct the Board to hear and determine *disputes between unions* giving rise to unfair labor practices under section 8(b)(4)(D) (jurisdictional strikes). [Emphasis added.] [19]

There was general agreement on the view that § 10(k) had merit as stimulating settlement machinery *within the ranks of labor*, agreement even from legislators opposed to other elements of the new law.[20]

Consideration of the Board's Contrary Construction of § 10(k)

The meaning of § 10(k) as we understand it is contrary to the construction announced by the Board. That agency's construction is entitled to deference. However, the text, legislative history and purpose, and precedent, combine to negative the aura of doubt which creates the occasion for giving weight to the Board's construction. *See CBS*, *supra*, at 585; *Truck Drivers and Helpers* v. *NLRB*, 101 U.S. App. D.C. 420, 249 F.2d 512 (1957), *cert. denied*, 355 U.S. 958 (1958). If there was room for doubt prior to *CBS*, that decision should have alerted the Board to modify its interpretation.[21]

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[19] I Legis. Hist. 561.

[20] *See* Legis. Hist. 1046, setting forth Senator Murray's favorable comment on this provision:

> We are confident that the mere threat of governmental action will have a beneficial effect in stimulating labor organizations to set up appropriate machinery for the settlement of such controversies within their own ranks. where they properly should be settled.

[21] In the wake of *CBS*, departing as it did from long-standing precedents and approach of the Board, commentators probing the various interrelated problems in depth attacked the Board's continuance of its definition of "parties" for purposes of § 10(k) abstention provision.

See Sussman, *Section 10(k): Mandate for Change?*, 1967 B.U.L. REV. 201, 229 ("The NLRB is incorrect in presently requiring that the employer be a party to an agreement procedure before it satisfies the standards necessary to avoid a Section 10(k) hearing"); *ABA Section on Labor Relations Law, Report of the Special Com-*

Nor is the Board's construction entitled to greater deference because of the mere fact that the 1959 amendments to the Taft Hartley Act did not modify § 10(k). Reenactment of a section of law does not of itself constitute conclusive legislative approval of either decisions or administrative regulations construing the provision, in the absence of a showing that the attention of Congress was specifically directed to the matter at hand. That is the teaching of *Helvering* v. *Hallock*, 309 U.S. 106 (1940), and *Girouard* v. *United States*, 328 U.S. 61 (1946), decisions whose vitality is underscored by the very recent opinion in *Boys Markets, Inc.* v. *Retail Clerk's Union*, —— U.S. —— (June 1, 1970). In *Boys Market* the Supreme Court reiterated its stricture against assigning conclusive weight to congressional silence as acceptance of a ruling "in the absence of persuasive circumstances evidencing a clear design" that congressional inaction denoted acquiescence.

Although the Taft-Hartley Act was amended in 1959, there is no indication that Congress gave consideration to the issue now before us, or even to the subject of jurisdictional strikes. It's inaction concerning a provision whose meaning we do not find really doubtful is not accompanied by any circumstances or indications from which we can discern a "clear design" to accept the Board's rulings.

Additional Court Precedent

We are in accord with the reasoning in *Penello* v. *Local Union No. 59, Sheet Metal Wkrs. Int. Assn.*, 195 F.Supp. 458 (D.Del. 1961), which rejected the view that the employer's resistance "could be the sole factor making inoperative" the "voluntary adjustment" abstention provision of §10(k). Judge Wright declared (at p. 466):

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mittee on the Building and Construction and Industry 452, 456 (1965) ("By the term 'parties' those legislators who discussed the matter indicated that Congress means the disputing unions themselves."); Cohen, *The NLRB and Section 10(k): A Study of the Reluctant Dragon*, 14 LAB. L.J. 905, 909 (1963); Note, 77 YALE L.J. 1191, 1201-02 (1968).

> Petitioner would have the Court ignore this policy of § 10(k), however, for this theory apparently is that no agreement between the groups of employees involved can stay the operation of § 8(b)(4)(D) so long as the employer does not agree. But this argument proves too much, for not only does the Supreme Court view the policies of § 10(k) as directed towards inducing voluntary settlement between the groups of employees involved, but also the language of that section would seem to compel it.

Rejection of Policy Argument of Board Counsel Overstressing Need To Obtain Employer Acquiescence

To this court counsel for the Board presented an argument on policy grounds that the Board's construction of § 10(k) is sound because it is best suited to preservation of industrial peace. We were not specifically cited to Board opinions wherein this policy was set forth by the Board as contrasted with argument of counsel. *See Braniff Airways, Inc.* v. *CAB*, 126 U.S. App. D.C. 399, 379 F.2d 453 (1967). But let us consider the contention on its merits.

Board counsel argue (Brief at 17):

> Employer acceptance of the "voluntary adjustment" is a prerequisite of final resolution of the dispute, because the employer does not commit an unfair labor practice by ignoring the award made under Section 10(k). . . . Securing the employer's participation in the dispute-settlement phase enhances the likelihood . . . that he will accept the result. . . .

A similar starting point, that the employer is not bound by the 10(k) determination was the premise of the argument made by the Board in CBS—and without success.[22]

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[22] It argued that if a striking union which had no claim to the work under a Board order or certification, or a contract, established its right to the work upon the basis of such factors as custom, tradition, etc., it would be necessary, in order to prevent the 10(k)

This approach harbors the difficulty of a built-in tendency (not necessarily an absolute rule) to give controlling weight to the determination of the employer—because he is not required to comply with the determination of the Board. A similar appraisal was part of the Court's reasoning in *CBS* for rejecting the Board construction there involved (364 U.S. at 579):

> For, in the vast majority of cases, such a narrow determination would leave the broader problem of work assignments in the hands of the employer, exactly where it was before enactment of § 10(k)—with the same old basic jurisdictional dispute likely continuing to vex him, and the rival unions, short of striking, would still be free to adopt other forms of pressure upon the employer.

Scope Given Voluntary Arbitration Procedures

Our conclusion that agreement for binding arbitration between the disputing unions is effective to stay a determination by the Board under § 10(k) is also supported by the general principle that full scope should be given to voluntary arbitration procedures. *Carey* v. *Westinghouse Corp.*, 375 U.S. 261 (1964). Not least of the advantages is the relative speed of voluntary arbitration, as compared with Board adjudicatory procedures—a matter of manifest significance in the handling of jurisdictional strikes.[23]

Importance of Permanent Resolution of Dispute

Furthermore, and significantly, the availability of a binding agreement between the disputing unions creates

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determination from being "virtually pointless," to construe 8(b)(4)(D) as permitting a union to strike to compel compliance with a 10(k) award. (Br. for NLRB at 9, 10, 20-26.) This would "encourage the very jurisdictional strikes which the Sections were intended to prevent." (Br. for NLRB at 25.)

[23] K. Strand, Jurisdictional Disputes in Construction: The Causes, The Joint Board and the NLRB 103-104 (1961).

means of enforcing a permanent resolution of the jurisdictional dispute not otherwise available to the Board. The Act does not authorize the Board to compel an employer to change his assignment, or a union to renounce an assignment that the employer is willing to give. But an award arising out of voluntary binding arbitration can be enforced by peaceful means. The impetus for unions to live up to inter-union agreements rests on reinforcing considerations of honor, reciprocity, mutuality—and enforceability. The winning union may bring an action, either in federal court under § 301 of the Taft-Hartley Act or in state court, to secure injunctive relief against a union that has failed to abide by its agreement to honor the Joint Board decision and renounce the work.[24] While delay may be involved before the union can secure an adjustment in fact, e.g., by prevailing in its suit for enforcement of the arbitration agreement, the public interest is safeguarded in the interim by the injunction obtained under § 10(*l*). That injunction remains in effect pending the ultimate adjustment, and may, indeed, give the winning union incentive to pursue with diligence legal enforcement of an award in its favor. Problems may arise in fact under this procedure if the employer tempts the losing union with continued offers of the work in dispute, but to give the losing union a legal right to another bite at the apple in the 10(k) proceeding is only to permit the jurisdictional battle to begin anew as a matter of right and principle, whereas a central objective of § 10(k) is to strengthen enforcement of agreements reached by the unions.

The construction of § 10(k) approved today means that proceedings on 8(b)(4)(D) unfair labor practices charges may be terminated because of union agreements reached

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[24] Additional avenues to enforcement are provided by the Joint Board itself. The Joint Board's procedural Rules and Regulations set out compliance procedures which provide, *inter alia*, that when a union is declared to be in noncompliance, no job decisions shall be issued in favor of that trade pending compliance.

after the proceedings are begun. But that is precisely the purpose of § 10(k) as expressed in *CBS*, where the Court said (364 U.S. at 576-77):

> Section 10(k) . . . quite plainly emphasizes the belief of Congress that it is more important to industrial peace that jurisdictional disputes be settled permanently than it is that unfair labor practice sanctions for jurisdictional strikes be imposed upon unions.

It also means that proceedings may be dismissed although an employer is dissatisfied with, and would prefer to contest and litigate, the agreement reached by the unions. The special provisions were passed, however, to protect the employer who was "neutral" in the dispute.

Special Provisions of § 10(k) Inapplicable to Employers Not Truly Neutral in Jurisdictional Dispute

An employer properly has standing under these provisions when he is plagued by employee groups that do not agree, and not when he is dissatisfied with the way they do agree. This principle has indeed been recognized by the Board so-called Safeway doctrine in cases where an unfair labor practice violation has been followed by actual agreement between unions, with renunciation of the work.[25] In those cases the Board agrees that there is no longer a jurisdictional dispute.

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[25] Highway Truckdrivers & Helpers, Local 107, Int'l Bhd of Teamsters (Safeway Stores, Inc.), 134 NLRB 1320 (1961); Local 1905, Carpet Linoleum & Soft Tile Layers (Butcher and Sweeney Constr. Co.), 143 NLRB 251 (1963).

In Quinn v. NLRB (Don Cartage Co.) 61 LRRM 2690 (1966) this court remanded a Board disposition of a 10(k) proceeding made on the basis of a decision by one union renouncing the particular work. This was *not* accepted as a settlement of the dispute by the other union. The Board decided that the dispute before it in the 10(k) proceeding should be limited to the particular work, leaving the broader dispute for reference to the new Joint Board established in 1965, which heightened provision for employer participation and attention to employer interests (*see* note 27, *infra*). That 1965 procedure to settle the broad dispute was

The essential point is that the employer's economic interests do not require the Board to pursue the matter under § 10(k) even though (a) there was an unfair labor practice under § 8(b)(4)(D) in the first instance and (b) the employer is not really neutral as between the unions but makes it clear that he is dissatisfied with the adjustment on which they have agreed. The same principle is fairly operative when the unions have agreed on a method for obtaining an adjustment, a binding arbitration that the unions will generally observe and have power to enforce.

The Taft-Hartley Act, though broad and unqualified in its terms, must be taken in light of its dominant purpose to protect "neutral" employers. This aspect of the "common law" of labor relations has been infused into the meaning of the Act in cases involving the provisions of the law broadly prohibiting secondary boycotts.[26] A similar principle is also applicable to ensure the kind of application of the jurisdictional dispute provisions that was intended by Congress.

We need not consider whether in some other case the Board could continue with a § 10(k) proceeding because the rival employee groups had not reached an actual agreement and their agreement on a procedure for adjustment was subject to an infirmity that undercut its fairness and reliability as a method of achieving the industrial peace

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established more than 10 days after the charge was filed in 1964, and hence, under the terms of § 10(k), came too late to be a mandatory procedure even if the 10(k) proceeding was viewed as extending to the broad dispute. This court held that the 10(k) dispute involved in that case was a broad dispute—the case having taken shape, by agreement of all parties, including the Board's General Counsel, as relating to the broad, continuing dispute, and a long proceeding, with full evidence, had been held on the issue given this scope. All that was involved was a ruling that on the facts of that case the Board had abused its discretion in endeavoring to narrow the dispute awaiting its determination.

[26] Woodwork Mfg. v. NLRB, 386 U.S. 612, 625; International Bhd. of Elec. Workers v. NLRB, 181 F.2d 34, 37 (2d Cir. 1950), *aff'd.*, 341 U.S. 694 (1951).

that is the ultimate objective of Congress.[27] It may also be that the Board has discretion to conclude that a paper agreement between disputing unions does not in fact reflect an operative mechanism likely to resolve the dispute. No such contention has been advanced by the Board either as to the general operation of the Joint Board plan or as to its handling of this particular inter-union dispute. Under these circumstances we hold that the presently operative Joint Board plan which creates in the unions not entitled to disputed work a legally enforceable obligation to renounce the work can be and was intended by Congress to be preserved as a private-ordering mechanism for the resolution of jurisdictional disputes. We conclude that § 10(k) was intended to give full play to this private-ordering mechanism, and requires the Board to abstain from adjudication while it is being pursued.[28]

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[27] Thus, we need not consider the efficacy for purposes of § 10(k) of an inter-union proceeding that made no realistic provision for meaningful attention to the interest of the employer and to questions of efficiency. In the case before us we have a Joint Board of employers and employees and one that was specifically organized and maintained for the purpose of coping with the requirements of the Taft-Hartley Act and the need for the effective resolution of jurisdictional disputes. It is a Board that takes into account factors of economy and efficiency of operation. The construction industry is typically beset by conflicts in which a group of employees and their employers (sometimes, of course, subcontractors) are likely to be aligned with each other as against another alignment of a different group of employees and their employers.

[28] We do not determine whether the rule of this decision should be retroactive to prior 10(k) determinations in cases other than the one before us. The Supreme Court has in various instances given only prospective effect to rulings that upset a previous course of decision. See Desist v. United States, 394 U.S. 244 (1969), and cases there cited. In some cases our court, in overturning a long-standing administrative construction of a statute, has held that the balance of public interest is best served by withholding completely retroactive effect to our ruling. Blair v. Freeman, 125 U.S.App.D.C. 207, 370 F.2d 229 (1966). Certainly our ruling would be applicable to any subsequent 10(k) decision, for the Board would be on notice of the infirmity. See Zuber v. Allen, 396 U.S. 168, 197 (1969). As to the applicability of our ruling to decisions previously issued by

Our understanding of the thrust of Federal labor policy as developed by Congress proceeds along lines congruous to those developed by the Supreme Court in *Boys Markets, Inc.* v. *Retail Clerks, supra.* There the Court reversed a ruling of but nine years standing in order to maintain the efficacy of the arbitration remedy—viewed in the large as furthered by an injunction preserving the status quo pending the arbitral process. The Court stressed the importance of mutuality—that an employer could not be held to his contract to pursue the arbitration remedy if he could not obtain effective relief (including pendente lite injunction) to enforce the union's similar obligation. Our situation is marked by technical differences but similarity in principles. As we have noted, Board abstention under § 10(k) in favor of an arbitration agreement is accompanied by injunctive relief to maintain the status quo pending the conducting of the arbitration and the enforcement of the award. And the pattern we find in the Act avoids a lack of mutuality since the employer cannot interfere with arbitration on the ground that he desires to permit the Board to conduct a proceeding and issue an order that he is not obligated to observe.

Accordingly the petition to review is granted; the petition for enforcement is denied; and the Board's order of June 27, 1968, 172 NLRB No. 77 is set aside.

So ordered

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the Board, we do not clearly discern the possible shape of the problem, and therefore we defer decision on what course will best effectuate the Federal labor policy contemplated by Congress.

MACKINNON, *Circuit Judge*, dissenting: Since its amendment over twenty years ago, the decisions of the National Labor Relations Board [1] (NLRB) and the federal courts [2] have assumed that the National Labor Rela-

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[1] United Brotherhood of Carpenters, etc., Local 581 (Ora Collard), 98 NLRB 346, 348-349 (1952); Int'l Union of Operating Engineers (Empire State Painting Co.), 99 NLRB 1481, 1484-1486 (1952); International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Pittsburgh Plate Glass Co.), 125 NLRB 1035, 1038-1039 (1959); United Assn. of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, 108 NLRB 186, 197 (1954); Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (General Riggers and Erectors, Inc.), 127 NLRB 26, 29 (1960); Newspaper and Mail Delivers' Union (News Syndicate Co.), 141 NLRB 578, 580 (1963); International Union of Operating Engineers, Local 66 (Frank P. Badolato & Son), 135 NLRB 1392, 1395-1396 (1962); Local 173, Wood, Wire and Metal Lathers' International Union, AFL-CIO (Newark and Essex Plastering Co.), 121 NLRB 1094, 1103-1104 (1958); Bay Counties District Council of Carpenters, Inc., 115 NLRB 1757, 1766-1767 (1956); Local 450, International Union of Operating Engineers (Sline Industrial Painters), 119 NLRB 1725, 1731 (1958), enforced, 275 F.2d 408 (5th Cir. 1960); Local 825, Int'l Union of Operating Engineers (Nichols Electric), 137 NLRB 1425, 1428-1429 (1962), enforced, 326 F.2d 213 (3d Cir. 1964); Local 964, United Brotherhood of Carpenters (Carleton Bros.), 141 NLRB 1138, 1142 (1963); Local 68, Wood, Wire & Metal Lathers, etc. (Acoustics & Specialties, Inc.), 142 NLRB 1073, 1076 (1963); Local 825, Int'l Union of Operating Engineers (Schwerman Co. of Pa., Inc.), 139 NLRB 1426, 1429 (1962); Carpenters District Council of Denver Inc. (J. O. Veteto & Son), 146 NLRB 1242, 1245 (1964); Electrical Workers, Local 26, etc. (McCloskey & Co.), 147 NLRB 1498, 1501-1503 (1964); Carpenters Local Union No. 1622 (O. R. Karst), 139 NLRB 591, 594 (1962); Operative Plasterers Local No. 65 (Twin City Tile & Marble Co.), 152 NLRB 1609 (1965); Local 300, United Assn. of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (D. Annunzio Bros., Inc.), 155 NLRB 836 (1965).

[2] *See* New Orleans Typographical Union No. 17 v. N.L.R.B., 368 F.2d 755, 763 (5th Cir. 1966); N.L.R.B. v. Local 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric Co), 326 F.2d 213, 216 (3rd Cir. 1964); Local 450, International Union of Operating Engineers, AFL-CIO (Sline Industrial Painters) v. Elliott, 256 F.2d 630, 636 (5th Cir. 1958). *See also* Carey v. *Westinghouse Electric Corp.*, 375 U.S. 261, 264 (1963), citing Wood, Wire & Metal Lathers Union, 119 NLRB 1345, 1347 (1958).

tions Act requires both the employer and the unions charged with committing an unfair labor practice under section 8(b)(4)(D) [3] to agree to be bound by an arbitration before the NLRB may be divested by section 10(k) [4] of jurisdiction to hear and decide the issue.

The majority opinion here would reverse all these administrative and court decisions and hold that the NLRB has no jurisdiction to decide such disputes where the two

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[3] The unfair labor practice is defined by § 8(b)(4)(D) which provides:

> It shall be an unfair labor practice for a labor organization or its agents—
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> * * * *
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> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting Commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case in object thereof is—
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> * * * *
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> (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work. 29 U.S.C. § 158(b)(4)(D).

[4] Section 10(k) provides:

> Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 158(b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed. 29 U.S.C. § 160(k).

unions involved are members of the AFL Building and Construction Trades Department if both have agreed to be bound by the decisions of the National Joint Board for the Settlement of Jurisdictional Disputes (Joint Board) [5] established by that labor organization.

In this case the NLRB found that the Plasterers Union committed an unfair labor practice under section 8(b) (4) (D), but the majority opinion would sustain the Plasterers' claim that the NLRB was without jurisdiction to hear and determine the dispute because the two unions (Plasterers and Tile Setters) had agreed upon a voluntary method of adjusting the dispute notwithstanding the fact that the employers had not agreed to be bound by such decision. The principal contention of the Plasterers, which is sustained by the majority opinion, is that the employers' consent to be bound by such decision is not required under section 10(k).

The NLRB contends the employers are parties to the dispute and since it is admitted that they have not agreed to be bound by the Joint Board determination of the dispute between the two unions that the NLRB is empowered and directed to make a binding determination of the dispute that will be controlling upon all the parties. The majority opinion bases its decision upon (1) alleged legislative history and (2) a single sentence in a 1961 Supreme Court decision. Both of these grounds have a similar cast to them as both involve isolated comments addressed to describing the garden variety of jurisdictional disputes and neither were in any way addressed to the problem that is before the court here of the NLRB's power and duty to adjudicate unfair labor practices caused by jurisdictional strikes in violation of section 8 (b) (4) (D). See section 10(a).

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[5] This board was created pursuant to an agreement of October 17, 1949 by the Building and Construction Trades Department of the AFL, the Participating Specialty Contractors Employers' Association and the Associated General Contractors of America, Inc. *See* 53 GEO. L.J. 130 n.198 (1964).

In asserting reliance on the legislative history, petitioner cites the article in 52 GEORGETOWN LAW JOURNAL 314 by counsel in this case. This article published in 1964 favored the Joint Board approach to jurisdictional disputes and it has spawned several later articles that adopt the same thesis that somehow the legislative history of section 10(k) supports the position here asserted on behalf of the Joint Board. The majority opinion adopts this argument. The feature of the "legislative history" that is relied upon to bring about this result is stated in the GEORGETOWN LAW JOURNAL article to be:

> Certainly, the literal meaning of section 10(k) does not require the employer to be a party to a settlement of a jurisdictional dispute,[6] and *the legislative history of the Act makes no mention whatsoever of employer's participation in private settlements under section 10(k)*. 52 GEO. L.J. 314, 332 (1964) (emphasis added).

In support of the italicized statement the article in a footnote cites five instances when Senators and Congressmen discussed jurisdictional disputes or strikes and did not mention employers' participation in private settlements un-

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[6] Actually, the literal meaning of § 10(k) deals only with jurisdictional strikes against an employer and does not concern itself with jurisdictional disputes between unions. So long as jurisdictional disputes are confined to unions the NLRB has no jurisdiction under § 10(k). It is only when an unfair labor practice involves an employer through a jurisdictional strike that the NLRB has any jurisdiction. *See* Justice Douglas' opinion in Carey v. Westinghouse Corp., *supra*, 375 U.S. at 263-264. Senator Taft made this same point on June 21, 1947 in a radio address. He was addressing himself to the handling of jurisdictional disputes under § 10(k) after that section had attained its present form. He said:

> The President says the bill would force unions to strike if they wish to have a jurisdictional dispute settled by the National Labor Relations Board. This is not so. All the union has to do is to file a petition under the representation section. *How could this provision increase strikes when it is not effective at all until there is already a jurisdictional strike or secondary boycott in effect?* (Emphasis added). 2 *Legislative History Labor Management Relations Act* 1947, p. 1627.

der section 10(k). There is nothing exceptional about this and it has absolutely no bearing on the issue here. The fact that Congress did not discuss employer participation does not in any way indicate any congressional intent on the matter. The members of Congress just did not address themselves to the point. In addition, there is a very good reason they did not address themselves to the point and that was because at the time four of the five remarks were made, section 10(k) was not in its present form. The bill originated in the House and at that stage it merely defined jurisdictional strikes and made them unlawful. Section 10(k) was not then in the bill. This treatment of jurisdictional strikes was supplanted in the Senate bill by a section 10(k) the principal provision of which empowered and authorized the NLRB to appoint an arbitrator to hear and determine such disputes. This provision for the NLRB appointment of an arbitrator was removed in the Conference Committee and section 10(k) then for the first time assumed its present character. Thus, the failure of the five members of Congress to discuss 10(k) in its present form is explained by the fact that the bill did not reach its present form until after their quoted remarks. While the 10-day provision was always a part of 10(k) from the time it emerged in the Senate bill at attracted no notice because it was always overshadowed by the provision for the Board to appoint an arbitrator.

This explains why the members of Congress in four out of five instances cited did not even consider the issue we have here.[7]

However, Senator Morse did discuss section 10(k) after it had achieved its present form and he interpreted the provision as requiring the NLRB to decide jurisdictional disputes. Speaking on the Senate floor on June 4, 1947 on the bill as reported by the House and Senate Conferees, Senator Morse said:

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[7] *See Legislative History Labor Management Relations Act* 1947, Representative Hartley 615, Senator Morse 950, Senator Taft 1012, Senator Murray 1046, Senator Smith 1157.

> I am especially disturbed about the amendment made in conference *which requires the Board itself*, rather than an arbitrator, *to decide these jurisdictional disputes.* I think the provision is completely unworkable. Under the provision *the Board will have to hear and decide the merits of the disputes* in the motion-picture industry and the controversy of over 50 years' standing between the teamsters and brewery workers unions, to mention only a few.[8] (Emphasis added). 2 *Legislative History of the Labor Management Relations Act*, 1947, p. 1554.

So the "legislative history" relied upon by the petitioner is not helpful and to the extent that the remarks of Senator Morse on June 5, 1947 may be considered to be in this category, they are adverse to petitioners. The truth of the matter is that the legislative history of section 10(k) does not afford any substantial assistance to its interpretation and the weakness of the majority opinion is demonstrated by its assertion that it does.

The Supreme Court decision is *NLRB* v. *Radio and Television Broadcast Engineers Union* [*CBS*], 364 U.S. 573 (1961), and the single sentence in that opinion which the majority opinion here relies upon comments upon a clause in section 10(k), as follows:

> [T]he clause "the dispute out of which such unfair labor practice shall have arisen" can have no other meaning except a jurisdictional dispute under § 8(b)(4)(D) which is a dispute between two or more groups of employees over which is entitled to do certain work for an employer. 364 U.S. at 579.

Since neither the legislative history nor this sentence in the CBS decision addressed the problem here being considered, neither furnish any support for the conclusion reached by the majority opinion. The comments quoted in

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[8] He did not address himself to the problem which arises under the Joint Board here. *See* note 5 *supra.*

the legislative history and in *CBS* are correct as far as they go, but they do not touch the issue here. They are merely comments taken out of context and misapplied.

Another feature of the majority opinion that obscures the issue is its overemphasis on the "jurisdictional dispute" here involved and its underemphasis on the fact that the dispute had ripened into a jurisdictional strike against an employer and that based upon such conduct, unfair labor practice charges had been filed with the NLRB.

No person needs any support for the proposition that the most ordinary union jurisdictional dispute primarily involves the unions concerned but that conclusion does not support the finding that the employer is not a very vital party to a jurisdictional strike arising out of that underlying dispute and which subsequently becomes the subject of an unfair labor practice charge. The unions by their actions have made him a party to their dispute and the statute recognizes this fact. Also, the fact that the Joint Board has employer groups in its structure, indicates that employers do have a direct interest in their decisions.

The words "such dispute" in section 10(k) *refer to the dispute out of which the unfair labor practice arose* and the statute provides that is the jurisdictional *strike* in which the striking union attempts to force the employer to assign particular work to employees in its union. There is no question that the employer is a party to that dispute. In fact, an employer is a necessary party to any dispute involving an unfair labor practice under section 8(b)(4)(D) by its very definition. Clearly the unfair labor practice arises out of the *strike*. More remotely the jurisdictional strike in many cases arises out of the jurisdictional *dispute*[9] but no unfair labor practice charge under section 8(b)(4)(D) ever arose solely out of a jurisdictional dispute between two unions. It requires "a strike" that involves an employer as one party.

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[9] This more remote dispute was what Justice Black was referring to in the *CBS* case, *supra* at 579.

Moreover, there are several interesting references to the interests of employers in jurisdictional disputes. The article in 52 GEORGETOWN LAW JOURNAL 314 on Jurisdictional Disputes cited in the majority opinion recognizes at pp. 320-21 that ". . . an employer is not necessarily a neutral party unconcerned with which group performs the work . . . ." Also, in *Carey* v. *Westinghouse Corp.*, 375 U.S. 261 (1964), Justice Douglas discusses jurisdictional disputes and points out several ways in which they may involve employers:

> We have here a so-called "jurisdictional" dispute involving two unions *and* the employer. But the term "jurisdictional" is not a word of a single meaning. In the setting of the present case this "jurisdictional" dispute could be one of two different, though related, species: either—(1) a controversy as to whether certain work should be performed by workers in one bargaining unit or those in another; or (2) a controversy as to which union should represent the employees doing particular work. If this controversy is considered to be the former, *the National Labor Relations Act* (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151 *et seq.*) *does not purport to cover all phases and stages of it.* While § 8(b)(4)(D) makes it an unfair labor practice for a union to strike to get an employer to assign work to a particular group of employees rather than to another, *the Act does not deal with the controversy anterior to a strike nor provide any machinery for resolving such a dispute absent a strike.*
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> * * * *
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> The Act and its remedies for "jurisdictional" controversies of that nature come into play only by a strike or a threat of a strike. *Such conduct gives the Board authority under § 10(k) to resolve the dispute.* 375 U.S. at 263-264. (Emphasis added).

I find Justice Douglas' approach to this portion of the Act to be more reasonable than the finespun theory advanced

in the majority opinion. After all, we are here faced with what all admit is an unfair labor practice that has been committed in violation of section 8(b)(4)(D). In such circumstances, section 10(k) should be read in conjunction with section 10(a) which provides:

> The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. *This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise* . . . . (Emphasis added). 29 U.S.C. § 160(a).

In carrying out the various duties imposed upon it by Congress the NLRB has followed a policy for twenty years which favors and encourages the unions to settle their own differences by themselves. Even when a union starts a jurisdictional strike in violation of section 8(b)(4)(D), the NLRB will quash the proceedings under 10(k) if either union renounces any claim to the work.[10] It is only when the dispute is protracted that the NLRB carries out the regular hearing as directed by section 10(k).[11] This is a recognition of the changed status of the dispute which occurs when one or both unions enlarge the dispute between themselves to include the employer by engaging in a strike against that employer in an attempt to obtain an advantage over their rival union.[12]

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[10] *See* Local 1905, Carpet, Linoleum & Soft Tile Layers (Southwestern Floor Co.), 143 NLRB 251, 255-256 n.7 (1963).

[11] This is the representation in the NLRB brief as to agency policy.

[12] In New Orleans Typographical Union No. 17 v. N.L.R.B., 368 F.2d 755, 767 (5th Cir. 1966), the court remarked:

> When the Union struck to enforce the work assignment it removed the controversy from the field of private contractual rights into the higher ambit of public rights.

It also made the employer a party to the dispute.

Such procedure by the NLRB must be considered to be a sound interpretation and application of the powers conferred upon it by the Act. The sound discretion they exercise in such matters also finds support in that provision of section 10(k) which requires the parties to

> ". . . submit to the Board *satisfactory evidence* that they have adjusted, or agreed upon methods for the voluntary *adjustment* of, the dispute. . . ." (Emphasis added).

"Satisfactory evidence . . . [of] adjustment" to whom? Obviously to the NLRB. This vests the NLRB with discretion in the matter. This discretion is weighed against the overriding duty imposed on the NLRB to prevent any unfair labor practice and to exercise that power unaffected "by any other means of adjustment." § 10(a). This places a heavy responsibility upon the NLRB in a section 8(b)(4)(D) proceeding to determine that the settlement procedure is going to be effective to adjust the unfair labor practice (not just the jurisdictional dispute) before it discusses the charge. I thus find the majority opinion that strikes at the heart of this procedure to be an unreasonable interpretation of the Act and find much more reasonable the 20-year administrative interpretation that has been placed by the Board upon these sections of the Act.

The Board's interpretation of its duties in these jurisdictional disputes has been regularly reported to Congress [13] and Congress has left section 10(k) unchanged even though it has made extensive revisions of the Act since 1947. It amended both sections (j) and (*l*) as well as 8(b)(4)(D) in 1959. Under such circumstances Congress is deemed to have accepted the construction placed

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[13] *See, e.g.*, Twentieth Annual Report of the National Labor Relations Board (G.P.O., 1956), p. 118; Twenty-first Annual Report of the National Labor Relations Board (G.P.O., 1957), p. 119; Twenty-third Annual Report of the National Labor Relations Board (G.P.O., 1959), pp. 101-102.

on section 10(k) by the Board [14] and under such circumstances it is well settled that the contemporaneous construction of the statute by the agency charged with its administration and enforcement should be sustained.[15] I according dissent from the majority opinion that would overturn long-standing Board practices.

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[14] Labor Board v. Gullet Gin Co., 340 U.S. 361, 366 (1951). Such interpretation does not assign conclusive weight to congressional inaction. (*See* Boys Markets, Inc. v. Retail Clerk's Union, —— U.S. —— (June 1, 1970), cited by the majority opinion at page 21). It merely points to the failure or refusal of Congress to amend this section when it was amending subsections on both sides of it as one factor in conjunction with the contemporaneous construction of the Act by the NLRB over 23 years, the provisions of the Act itself including section 10(a) and Mr. Justice Douglas' opinion in Carey v. Westinghouse Corp., *supra*, wherein he points out that "there is no question that the Board is not precluded from adjudicating unfair labor practice charges even though they might have been the subject of an arbitration proceeding and award," as pointing to a conclusion that the Act is not to be construed in the manner the majority opinion states. These are all indicia of congressional intent and that is the principle here relied upon; not *stare decisis* as in Boys Markets, Inc.

[15] Udall v. Tallman, 380 U.S. 1, 16-17 (1965); F.T.C. v. Mandel Bros., Inc., 359 U.S. 385, 391 (1959); NLRB v. Coca-Cola Bottling Co., 350 U.S. 264, 269 (1956); Commissioner v. Estate of Sternberger, 348 U.S. 187, 199 (1955); United States v. Public Utilities Commission of California, 345 U.S. 295, 314-315 (1953); Union Mfg. Co. v. NLRB, 95 U.S.App.D.C. 252, 221 F.2d 532, 536, *cert. denied*, 349 U.S. 921 (1955), and cases there cited; West Texas Utilities Co. v. NLRB, 87 U.S.App.D.C. 179, 181, 184 F.2d 233, 235 (1950), *cert. denied*, 341 U.S. 939 (1951).

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1969

No. 22,073

(United States Court of Appeals for the District of Columbia Circuit Filed Jun 30, 1970
Nathan J. Paulson, Clerk)

PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

TEXAS STATE TILE & TERRAZZO CO., INC., ET AL., AND LOCAL UNION 20 BRICKLAYERS, ETC., LOCAL UNION 108 INT'L ASSOC. OF MARBLE, ETC., POLISHERS, ET AL., INTERVENORS

On Petition to Review and on Cross-Petition to Enforce an Order of the National Labor Relations Board

Before: McGowan, Leventhal and MacKinnon, Circuit Judges.

JUDGMENT

This case came on to be heard on the record from the Natitonal Labor Relations Board, and was argued by counsel.

ON CONSIDERATION THEREOF, It is ordered and adjudged by this Court that the petition for review is hereby granted; the petition to enforce is denied; and the order of the National Labor Relations Board on review herein (172 NLRB No. 77, June 27, 1968) is hereby set aside.

Per Curiam

For the Court:

NATHAN J. PAULSON, Clerk

By:

Hugh E. Kline
Chief Deputy Clerk

Dated: June 30, 1970.

Opinion per Circuit Judge Leventhal.
Separate dissenting opinion by Circuit Judge MacKinnon.

A true copy:

Test: NATHAN J. PAULSON, Clerk
United States Court of Appeals
for the District of Columbia Circuit.

By: Dorothy E. Long, Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1970

No. 22,073

(United States Court of Appeals for the District of Columbia Circuit Filed Oct. 1, 1970
Nathan J. Paulson, Clerk)

PLASTERERS LOCAL UNION NO. 79, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

TEXAS STATE TILE & TERRAZZO CO., INC., ET AL., AND LOCAL UNION 20 BRICKLAYERS, ETC., LOCAL UNION 108 INT'L ASSOC. OF MARBLE, ETC., POLISHERS, ET AL., INTERVENORS

Before: Bazelon, Chief Judge; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, Circuit Judges; in Chambers.

ORDER

On consideration of respondent's petition for rehearing and suggestion for rehearing *en banc* and of intervenor's petition for rehearing and suggestion for rehearing *en banc*, and it appearing that there is not a majority of the Judges in regular active service in favor of having this case reheard *en banc*, it is

ORDERED by the Court that the aforesaid petitions for rehearing and suggestions for rehearing *en banc* are denied.

Per Curiam

A true copy:

Test: NATHAN J. PAULSON, Clerk
United States Court of Appeals
for the District of Columbia Circuit.

By: Elisabeth E. Namuth, Deputy Clerk

Circuit Judge Wright did not participate in the foregoing order.

Circuit Judge MacKinnon would grant the respondent's and intervenor's suggestions for rehearing *en banc* for the reasons set forth in his dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 1184, October Term, 1970

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PLASTERERS' LOCAL UNION NO. 79, ETC., ET AL.

ORDER ALLOWING CERTIORARI—filed March 22, 1971

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

The case is consolidated with No. 1231 and a total of one hour is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 1231, October Term, 1970

TEXAS STATE TILE & TERRAZZO CO., INC., ET AL., PETITIONERS

v.

PLASTERERS' LOCAL UNION NO. 79, ETC., ET AL.

ORDER ALLOWING CERTIORARI—filed March 22, 1971

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